

UNITED STATES DEPARTMENT OF ENERGY

**WORKER ADVOCACY ADVISORY COMMITTEE
PUBLIC MEETING**

Ballroom C
Loews L'Enfant Plaza Hotel
Washington, D.C.

Thursday, January 11, 2001
9:00 a.m.

Committee Members

EMILY SPIELER, Chair
RICKY BLEA
LESLIE I. BODEN
JOHN F. BURTON, JR.
JAMES ELLENBERGER
VIKKI HATFIELD
STEVEN MARKOWITZ
KATHRYN MUELLER
IRIS J. POST
LINDA RUDOLPH
GLENN SHOR
ANDREA KIDD TAYLOR
GREGORY WAGNER
LAURA S. WELCH

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9:23 a.m.

Welcome and Opening Remarks

MS. SPIELER: This is the first meeting of DOE's Worker Advocacy Advisory Committee, and the -- you should all have copies of the agenda. There is a formal public comment period at the end of the day, set on the agenda at 3:45, and we'll be happy to take public comments then. But if people who are not on the committee really want to add something to a particular discussion and depending upon the timing and how well we're doing on the agenda, I'm prepared to take comments as we go along as well.

My name is Emily Spieler. I've been asked to chair this committee.

What I'd like to start out by doing is have, first, the committee members and then everyone else in the room introduce yourselves. Rick, if you want to start?

MR. BLEA: My name is Rick Blea.

MS. SPIELER: And -- and some affiliation or --

MR. BLEA: Okay. I'm a Special Representative for the United Association of Plumbers and Pipefitters. I worked in Los Alamos for 12 years and with the -- for seven years there. My dad retired from there. I've been associated with Sandia Labs and Los Alamos Labs for quite a few years.

DR. BODEN: My name is Les Boden. I'm a professor in the Environmental Health Department at Boston University. Spent some years thinking about workers' comp issues and am also part of the former Worker Medical Surveillance Project at the Nevada Test Site.

MR. BURTON: I'm John Burton, a professor at Rutgers University in the School of Management/Labor Relations. I've done research on workers' compensation and I was the chair of the National Commission on State Workmen's Compensation Laws that was established by OSHA.

MR. ELLENBERGER: I'm Jim Ellenberger. I'm with the Department of Occupational Safety and Health at the AFL-CIO. And one of my major functions in that job is to work with our state organizations on workers' compensation issues.

MS. MUELLER: I'm Kathryn Mueller. I'm an associate professor at the University of Colorado Health Sciences Center in Occupational Medicine, and I'm the medical director of the Division of Workers' Compensation in Colorado.

MS. HATFIELD: I'm Vikki Hatfield, and I'm from Oak Ridge, Tennessee, and my dad worked for Department of Energy for over 30 years. He's been retired 15. He's been sick 10 of those 15 years, so I'm the community representative, I would say. He has been through this a long time.

MR. MICHAELS: My name is David Michaels. For the next week and a half I'll be Assistant Secretary of Energy.

(Laughter)

MR. MICHAELS: -- Environment, Safety and Health. So I'm actually not formally a member of this panel, but I hold the position that this panel advises, so that's -- for that reason I get to sit at the front table.

(Laughter)

MS. SPIELER: Like I said, my name is Emily Spieler. I'm a professor at West Virginia University and former administrator of the West Virginia -- West Virginia workers' compensation system.

DR. MARKOWITZ: I'm Steven Markowitz. I direct the Center for the Biology and Natural Systems at Queens College, City University of New York, and I'm an occupational medicine physician. I run the formal worker benefits screening program with -- national union at -- guest institutions -- national lab.

MS. POST: My name is Iris Post. I'm the Iowa Workers' Compensation commissioner. In Iowa we just have one commissioner, and that's me.

(Laughter)

MS. POST: I also am an attorney.

MS. RUDOLPH: I'm Linda Rudolph. I'm the -- director for the Division of Workers' Compensation in California, and in a past life many years ago I was an occupational health physician with -- chemical -- worked with uranium miners in New Mexico and beryllium workers in Utah.

MR. WAGNER: I'm Greg Wagner. I currently direct the Division of Respiratory Disease Studies for the National Institute for Occupational Safety and Health, although I'm not on this panel representing the Institute. At various times I've been involved with Federal black lung compensation issues, sat on an advisory committee for the Department of Justice around the Radiation Exposure Compensation Act, was on a advisory committee for the Department of Energy on the beryllium rule, and was previously involved in state compensation issues, particularly around hearing loss and lung diseases.

MS. SPIELER: Before we go to the -- the audience, let me just say that Andrea Taylor will be joining us after another meeting that she had --

(Laughter)

MS. SPIELER: Okay. Andrea Taylor is joining us and in a moment will introduce herself --

(Laughter)

MS. SPIELER: Glenn Shor is represented by the telephone. He's joining us by telephone from California.

Andrea, would you just quickly introduce yourself?

MS. TAYLOR: Okay. Sorry. Good morning. I'm Andrea Taylor. I am currently a member of the U.S. Chemical Safety Board. I'm an industrial hygienist by training. My former employment was with United Auto Workers in the Health and Safety Department inspecting work places on hazards of employee exposures.

MS. SPIELER: And I believe Laurie Welch will be joining us but has not made it yet.

Now, I'd like to ask that those of you who are sitting in the seats up there introduce yourselves and tell us who you are.

MS. KEATING: Hi. I'm Judy Keating, and I'm with the Office of Environment, Safety, and Health, and I'm also the designated Federal official for this FACA meeting.

MR. SILVERMAN: I'm Josh Silverman. I'm also with the Office of Environment, Safety, and Health.

AUDIENCE MEMBER: I'm Kate -- and for the next week and -- week and a half I'm senior policy advisor at the --

AUDIENCE MEMBER: But you'll be there longer.

AUDIENCE MEMBER: I'll be your representative -- policy advisor --

MS. SPIELER: Okay.

MR. EGAN: Jeff Egan. I'm a special assistant in the --

MS. SPIELER: Okay.

MR. LONG: My name is Drew Long. I'm a porter with the Federal Human Resources League.

MS. SPIELER: Okay.

MS. BANNAN: Kate Bannan, University of California, Office of Federal and Governmental Relations.

MS. SWITCHKOV: Debbie Switchkov. I'm here from the Office of the Assistant Secretary for Environmental Management, and I served as the senior policy advisor --

MR. ELLIOTT: I'm Larry Elliott. I'm from NIOSH and work out of Cincinnati. I've been spending a lot of time here in D.C. -- chair of -- our responsibilities --

AUDIENCE MEMBER: My name's Steve -- I'm a reporter for the "Las Vegas Review Journal."

MS. SPIELER: Is there a person sitting behind you?

MS. CRESPEY: Oh, Louanne Crespey, Attorney -- Office of Department of Labor, working on the Task Force on --

MS. SPIELER: Okay. Great. And moving over here?

MR. DANIELS: I'm Ray Daniels. I'm with the Defense -- Facility Safety Board, just observing.

MS. SPIELER: Welcome.

AUDIENCE MEMBER: Good morning -- for Safety and Health, Office of Environment, Safety, and Health.

MR. FULTON: I'm George Fulton, -- Federal and National

Laboratory -- Department. I'm involved with the --

MR. CHASE: Paul Chase. I work with issues related to veterans' exposure to ionizing radiation of their participation in -- test program.

AUDIENCE MEMBER: -- and I work with --

(Laughter)

MS. SPIELER: Okay. And at the table?

MS. TYLER: I -- Tyler. I'm with the --

MS. RICHARDSON: And I'm Renee Richardson. And I also work with the workers' compensation --

MS. SPIELER: Great. Thank you. I -- I forgot to mention that one member of this committee will not be -- who was initially asked: George Jones. And I believe a replacement for him is being chosen and -- and that that's in the works. So he will not be joining us.

Well, David, I think I'm going to turn this over to you, and unless there are any other preliminary matters that people want to take up?

**History and Provisions of Legislation/
Division of Labor Among Agencies
Vision Statement/Path Forward**

MR. MICHAELS: And I've been asked to provide you a little -- in addition to the welcome from Emily, some welcome and some background as to how we got to where we are and what -- you know, where we need to go.

First, let me say to the members of this committee thank you for agreeing to be on this. I'm really in awe of many of you. It's -- the work that you've done and the chance to be -- to have an advisory committee of this stature, even if it only for a brief period of time in terms of giving me advice, is a -- is really quite remarkable, and I -- I think my successor is really very blessed to have this group be able to give them -- give him or her help on this issue. I think there are people in this room who have done remarkable work in the area of workers' compensation and the health of workers around the nuclear weapons complex, and I think having you all in the same room giving advice to the Department of Energy is really a wonderful and remarkable opportunity.

A piece of housekeeping before we go on. You know, this is the end of the Clinton-Gore administration, and in the last weeks many of you know we're trying to do as much as we can and finish as many commitments --

(The proceedings were interrupted by the ringing of the telephone.)

MR. MICHAELS: Sounds like Glenn Shor.

(Inaudible discussion)

MR. MICHAELS: No, this must be different.

MS. KIMPAN: This is Kate Kimpan.

(Inaudible discussion)

MS. KIMPAN: They'll be -- the meeting's, like, really going on now and we are -- as we speak.

(Inaudible reply by caller)

MR. MICHAELS: Okay.

MS. KIMPAN: No idea. I'll have Judy call you.

AUDIENCE MEMBER: She's right here.

MR. MICHAELS: That's okay. Have Judy call her. Okay.

(Pause)

MR. MICHAELS: So one of the many commitments that were made around the safety and health and workers' compensation initiative for nuclear workers -- or two of the commitments will be fulfilled this afternoon, and we want to offer you an opportunity to join us.

(Proceedings interrupted by the ringing of the telephone.)

MR. SHOR: Hi. This is Glenn Shor.

MS. SPIELER: Hi, Glenn Shor. avid just began some comment --

MR. MICHAELS: Why doesn't he introduce himself?

(Pause)

MS. SPIELER: Are you there, Glenn?

MR. SHOR: I'm here.

MS. SPIELER: Okay. You're on speaker phone at the committee. Others have introduced themselves. Why don't you introduce yourself, and then David's going to start some comments.

MR. SHOR: Okay. Thanks. This is Glenn Shor, State of California, Workers' Compensation.

MR. MICHAELS: Great. Looking good today, Glenn.

(Laughter)

MR. MICHAELS: In his executive order of December 7th President Clinton made a number of commitments which we'll be fulfilling this afternoon. One involved sending additional legislation to Capital Hill amending the Energy Employees Occupational Illness Compensation Program Act, improving it, make -- clarifying pieces of it.

The major improvement which will be in the -- in the -- legislation that we're proposing today will be an additional piece on wage loss. Right now the legislation's written that workers have -- are offered a lump sum payment as well as medical -- reimbursement for medical costs. This afternoon we'll be sending up legislation offering workers the option of taking a wage loss payment instead of \$150,000, which in many cases will amount to a great deal more money.

In addition, it -- it clarifies and makes the workings of the -- the program much more efficient and fair. Deals with some technical issues and some problems in the writing of the first legislation.

So President Clinton said -- promised that to be done in January, and we're doing that today. Secretary Richardson will be announcing that this afternoon.

In addition, one of the provisions of the legislation identified a group of workers called Atomic Weapons Employees, and they date to a period in the nuclear weapons complex before we built a lot of the facilities that we're dealing with today. Obviously, not before we built Los Alamos or Hanford, but before we built a lot of the processing plants in the midwest we used private facilities to work on uranium, plutonium, and things like that, and workers were exposed to radiation there and they were included in the legislation.

And they will be -- the list of facilities that are covered by our legislation will be announced today in addition to the list of beryllium vendors who are covered by the legislation, in addition to the list of all the Department of Energy facilities covered by this legislation. That list will be sent -- is being sent to the "Federal Register" -- actually, has been sent. We will be releasing that list today, and that has important implications for many parts of the country where people who didn't know that they -- or didn't remember they had been involved in nuclear weapons production will be notified of that.

So Secretary Richardson will be announcing that along with representatives of Department of Labor at 1:00 today in the large auditorium or in the small auditorium, one of the two, but they're next -- the small auditorium at the Department of Energy up the street. If anyone would like to come and attend, I think it'll be an interesting session. Speak with Judy Keating during the break to make sure you're on any lists or you may have to get there early to just get badged in to go there.

The committee is already on the list. We assumed that you might want to come. Obviously, this is all -- this isn't a committee meeting. Secretary Richardson also would like to thank you for participating. So if you can come that would be great. If not, we'll be convening back here at two.

MR. BURTON: What time is that?

MR. MICHAELS: That will be 1:00. Just up the street. And we can give you information. That's the housekeeping I wanted to get to.

Let me give you some background about what we're doing here and why we're here. Over the last two years, as many of you know, the Clinton-Gore administration has first acknowledged that workers were exposed to particularly hazardous materials in the production of nuclear weapons and testing of nuclear weapons and now the clean-up of the waste surrounding nuclear weapons, and in fact, people did get sick as a result of that. Legislation was proposed and was passed that covered some of the conditions that were unique to the nuclear weapons industry, providing a new Federal workers' compensation program for people exposed to beryllium who developed chronic beryllium disease and for people who have radiation-related cancer as well as people who've developed silicosis at the Nevada Test Site and some of the other underground testing locations. And that's the -- that legislation is what we're talking about amending this afternoon.

However, as those of us in occupational health know, the other -- many of the other exposures that were present and continue to be present in the nuclear weapons complex cause occupational illness. We have people exposed to asbestos, to solvents, to mercury, to lead, to various neurotoxins, and we have people who are ill all around the complex, many of whom have had significant

exposures and they believe they've been made ill by -- by their exposures. And the Department of Energy has a very unfortunate history of always having fought people who claimed to have work-related illnesses and made sure their cases were denied either in workers' compensation adjudication or in -- in court litigation, if it ever went there.

Secretary of Energy Bill Richardson announced an end to that policy last year, but that policy was further -- a stake was driven into the heart of that policy by this legislation. And this legislation has some very -- the legislation was passed by Congress and signed by President Clinton in the fall has a -- has a very clear new mandate for the Department of Energy, which is to help workers, is to help sick workers rather than to fight them.

And our office, the Worker -- Office of Advocacy within the Office of -- of Environment, Safety, and Health has the responsibility to do that work. And the legislation sets up a structure on how we should begin to help workers who have diseases caused by exposures other than those we just talked about, other than beryllium, radiation-related cancer, or silica. How we can help all the other workers deal with state workers' compensation and help them get workers' compensation rather than fight them.

And as everybody here knows, that -- that will be a complicated task. It will not be easy. But we have a very clear mandate from the president and from Congress to do that, and so our job here is to figure out how best to do that.

What the legislation calls for is one or more panels of physicians identified and selected by the National Institute for Occupational Safety and Health but paid for by the Department of Energy and staffed by the Department of Energy who will review claims for illnesses other than chronic beryllium disease, radiation-related cancer, and certain silicosis claims. All those claims would be reviewed by this panel of physicians or by one of these panels of physicians, and if these -- this panel of physicians or one of the panels says this case is in fact work-related, it's the Department of Energy's job then to get those individuals workers' compensation through the state system.

And it actually -- the legislation says -- and the legislation is here in your book. It says we should develop memoranda of understanding with state workers' compensation agencies and state governors to -- to facilitate that and we should tell our contractors who are in fact in many cases the employer of record, you know, in -- in the facilities that they shouldn't -- they should no longer fight those claims.

And I'm pleased that actually there are several representatives of the University of California here, who is one of our largest contractors. And for people who don't understand the background here, the way the nuclear weapons

complex has operated in recent years and for much of its time though, not solely -- the work is done by -- in facilities owned by the U.S. Government but operated by contractors like the University of California or private contractors like Lockheed Martin or Westinghouse, paid by Federal funds, but the workers are covered by state labor laws because they're private sector employees in those states.

So a Los Alamos worker is a private sector worker in New Mexico who receives a check from, in fact, the University of California and is covered -- for workers' compensation purposes is covered by New Mexico workers' compensation laws.

So at -- getting back to the legislation, the legislation says that in cases where the individuals are found to have work-related illnesses, we would tell our contractor: Lockheed Martin, the University of California, Westinghouse, whoever it is, to assist that person rather than to fight that person getting workers' compensation. And I think we'll be spending much of the day here talking about ways to do that.

We -- we essentially have to start from scratch and set up a system that will receive claims from individuals; gather information supporting, you know, the documentation around those claims, which involves medical information, exposure information, you know, industrial hygiene information, health physics information; have a system where these panels of physicians can make decisions, and we have to decide how those decisions are made; how that information gets back to the Department of Energy, gets back to the individual, gets back to the state workers' compensation agency, gets back to the contractor; and how we can make sure those people get the justice that they deserve.

So we're starting from scratch in many ways. It's a very exciting opportunity for those of us who've worked in workers' compensation for many years. We know that there are many barriers to people with occupational illness getting workers' compensation. One of them is the question of causality and proving causation. Well, that's -- in some ways we're putting that aside here. We're saying if -- if this panel of physicians says that this case is work-related it -- it will be agreed upon by everybody involved, according to this legislation, that the case is work-related and there should no longer be discussion about that.

And one of the other issues, obviously, in workers' compensation is opposition from the employer, and hopefully in this case we've been able to -- to -- to mitigate that because the Department of Energy will tell its contractor, and we pay all the bills in this case, that they should not fight the claim and that we should, you know, tell our -- we will tell them we will not reimburse legal costs for -- if they fight the claim.

But that leaves all the issues in workers' compensation -- the -- the barriers that exist in the workings of workers' compensation system that all of us

are familiar with -- they're different in every state -- that we have to think about how we can overcome.

So that's -- that's sort of the -- the -- the background. The Department of Energy's Office of -- of Worker Advocacy is really in its infancy. We don't yet have a director. We have a -- we had a national search. We have many good applicants. The -- the period for applying ended December 31st. We're now evaluating the applicants. We hope to hire someone very soon, and that person will really set up a whole office.

So this is a -- a wonderful time to get some input in -- in how we should be working; how internally we should set up an office; how we should work with NIOSH to -- to set up these panels of physicians; how we should interact with the Department of Labor, which will be administering the larger -- the other program, the program around beryllium disease and radiation disease 'cause obviously we have to work together. We can't have parallel programs where people are bounced back and forth between those programs -- how we work with the rest of the Department of Energy; how we work with our communities, with our unions. These are all really questions that we can address today.

And I hope out of this we have some clear direction to go, some activities that -- that our office can start on, some further issues that the -- the -- that this advisory committee will want to think about over the next few months to help us, and I -- I can't tell you how excited I am. I think this is a great opportunity. This is -- in some ways, for -- in terms of workers' compensation it's a let's -- can we -- can we keep the existing system yet look at it differently and have a new model and see -- see if we can actually make it work.

Thank you all again for coming.

MS. SPIELER: Questions for David from committee members?

DR. MARKOWITZ: The Department of Labor has no role in this part of the Act?

MR. MICHAELS: Well, they have no formal role, but it's not to say they couldn't have a role. In fact, we've had discussions with the Department of Labor and pretty much agree that we should probably have one intake procedure for both -- for both programs because it -- it won't always be clear if someone fits into this program or the Labor Department's program so we shouldn't make people apply to two programs or to bounce back and forth. So we certainly -- we certainly can have a relationship with the Department of Labor, and I hope we would, but there's no authorized role in terms of legislation.

I'm pleased Department of Labor has a representative here, and I know that Shelby Hallmark, the head of the Office of Workers' Compensation

Programs will be coming to Secretary Richardson's announcement today and he'll also be making -- you know, joining in that announcement 'cause it's a joint Labor Department-Energy Department program.

MS. POST: Let me ask a question about timing. When you look at the legislation and you think about what -- the various roles of all the governmental agencies are, how do you see the timing of this rolling out to the public basically, where an individual can expect to actually receive some benefit?

MR. MICHAELS: Well, the -- the president's executive order actually has some required dates, and obviously there's -- there -- there's no hammer connected to those dates. But the administration is expected to issue -- to have a number of things in place. I call your attention to Tab 2, the Executive Order 13179, which discusses, first, the -- the Labor Department is expected to promulgate regulations for their piece by May 31st of 2001, and have by July 31st all the forms available.

Now, that's -- again, this is -- you know, we're hopeful we can do this, and I think -- you know, we got a very late start because of the -- the -- the appropriations battle where Labor and -- Departments of Labor and Health and Human Services didn't get their appropriations, really, until December and they could not start working on it. You know, we had hoped they'd start working earlier, but they couldn't. So I think this may get delayed.

But the hope is that all those -- the Labor and HHS will have all their mechanisms in operation, really, by the summer. This -- this office, though, can start at any point. I think Kate Kimpan will tell you we've been doing this already. We've been on -- but it's really been on a case-by-case basis. But we don't have the positions in place. But there are physician panels around the country that already exist. There's one at the Fernault site, and there's one at Oak Ridge. And then are individuals who come forward with cases that really, clearly, are work-related and we haven't tried -- you know, we haven't had to readjudicate them.

And Kate has been working with state workers' compensation agencies and our contractors, you know, pushing people into the system. And we've had some success, and I think she'll talk about that later.

So we should be -- you know, we should get this going as fast as we can. We don't have -- we have to issue some -- we'll have to issue some regulations and I think they should be out by the summer as well and how these panels would work, and we should have the panels in place I'd like to see by, you know, by late spring, early summer.

MS. SPIELER: Linda?

MS. RUDOLPH: How broad a sort of publicity notification effort are you anticipating? Or is that for this group to decide?

MR. MICHAELS: I think we'd like -- we'd love to hear your -- your suggestions. That's the other thing we should -- should be done jointly with the Labor Department I would expect, though. That's exactly --

MS. TAYLOR: I'm still a little unclear about the positions panels. They have not been established at -- within NIOSH, right?

MR. MICHAELS: Well, the -- they would be established within the Department of Energy. NIOSH will essentially select the people for them to --

MS. TAYLOR: I see.

MR. MICHAELS: -- ensure their independence from the Department of Energy. But no, nothing has been established yet.

MS. TAYLOR: Okay. And then once they are established and they're reviewing workers' comp cases --

MR. MICHAELS: Or a potential workers' comp cases.

MS. TAYLOR: Potential workers' comp --

MR. MICHAELS: Correct.

MS. TAYLOR: -- and an employee has been identified as his own spin related to his exposures on the job, the DOE will assist. Now, what does that mean exactly?

MR. MICHAELS: Well, I think we're talking about what I think is the model --

MS. TAYLOR: Okay.

MR. MICHAELS: -- but I think -- and -- but I think we have a segment of the -- of the -- of the day where we'll spend much more time on this, and Dr. Paul Seligman I think will -- he stepped out, but he's the deputy assistant director for Health -- and he'll -- he'll be involved in it as well. But the -- the basic idea, I think, is that if people -- the individuals will send their -- us their information that would be -- what they believe would be necessary to establish, A, they have a disease, and B, that it's related to work.

MS. TAYLOR: Okay.

MR. MICHAELS: We would, if necessary, provide additional primarily industrial hygiene exposure -- frankly, why I called you --

MS. TAYLOR: Mm-hmm.

MR. MICHAELS: -- invite you to be on this panel because --

MS. TAYLOR: Right.

MR. MICHAELS: -- going back into the records -- Dr. Taylor's an industrial hygienist of great renown, and this is exactly what we need for it -- to think about what exposure information would -- would we need to add to the information they send in order to help that panel make their decisions.

MS. TAYLOR: Okay.

MR. MICHAELS: And that's -- so what's our staffing do we have to provide and what's our information do we have to provide that panel? And then the question is once the panel makes a decision, how do we work with that -- that individual worker and the state workers' compensation agency and the contractor to make sure they get --

MS. TAYLOR: Their compensation.

MR. MICHAELS: -- their compensation if we said it's work-related? We -- it's our job to get them compensation.

MS. TAYLOR: Okay.

DR. BODEN: I'm curious in terms of this committee about sort of where the process -- our advice begins. And I'm thinking, for example, that really the first step is -- in this whole process is for somebody to know that they have something that might be eligible for compensation and that that's often a problem for many people who have occupational disease. And I guess my question is is the purview of this committee also in trying to figure out how -- what kinds of input there ought to be in that first step?

MR. MICHAELS: Yes. And the legislation actually calls upon the Department of Energy to develop the programs and notify people potentially of risk. And so the contents of that and the -- the mechanisms of that certainly is in the purview of -- of this committee.

MR. BODEN: But also if you're notified that you might be at risk finding somebody who can then tell you whether you have an illness that might be

related to the --

MR. MICHAELS: And we have former worker medical surveillance programs that offer medical surveillance to former and, in some cases, current workers at many but not all of our major sites where there are positions paid by DOE but are independent of DOE, and we do some of this work. And they -- the ways to -- to -- to integrate those programs into this program is -- is also something we should consider. We're fortunate that Dr. Markowitz and Dr. Welch as well as our physicians in this program and, Les, you're one of them as well, so it's -- we want to think about how we can use those doctors in those programs to -- to feed this program.

(Pause)

MS. SPIELER: Oh, James?

MR. ELLENBERGER: One of the reasons that we're going down this path is the failure that we met in trying to include more diseases and illnesses in the -- in the Act -- in the legislation that was indeed enacted. And it's a difficult problem to address; everyone realizes that. But there are a lot of sick people out there who -- who aren't going to fall under the purview of compensation as administered by the Department of Labor, so they're going to be looking at this system for help and relief.

And -- and we all know, and I think you put it very -- very well, David, that -- that we've got enormous resistance both from employers, in this case contractors who don't want to pay these claims, don't want to accept them for lots of reasons, and workers' compensation agencies who -- who aren't prepared, don't have the experience in dealing with these issues, would rather that they just go away.

So I guess my question is what sort of initial reaction -- we -- we've talked about this quite a bit in the context of developing legislation and -- and then the -- the idea of -- of putting together an Office of Worker Advocacy. What sort of reaction has -- has that engendered from state workers' compensation agencies and from your contractors?

MR. MICHAELS: You know, I will talk briefly about that, and we have a section on -- on the -- on the agenda which Kate Kimpan will be -- but I'd be interested, actually, in the opinions of those of you who work for state compensation agencies on -- on the validity of what we've learned.

But Kate and I -- Kate Kimpan and I have met with several workers' compensation agency administrators and they felt in general if a contractor is

willing to accept the claim they saw no reason why they couldn't, you know, facilitate it and process it and make sure the person gets the proper payment. Even if, and we usually would raise issues, if we missed the statute for limitations, for example, that if our -- if -- if DOE's contractor and the employee all come to an agreement on moving it forward, there should be no problem in moving it forward. Now, that's all theoretical at this point.

But I'd be interested in what, you know, -- Dr. Mueller thinks about -- Colorado -- I mean not to put you on the spot, but I mean that's -- that's the reaction we've gotten. I was in South Carolina and New Mexico in December asking the same question. They -- and the administrator said we think it could work. And that's --

MS. MUELLER: I mean those are the issues, the things like when, how -- how far into the claim it is, and so forth --

MR. MICHAELS: Right.

MS. MUELLER: -- and looking at the causality question and whether you're going to have the physician panels address it the way that we normally would with workers' comp because in the other part of the statute the -- the -- the causality levels are different than -- that are in workers' comp statute for most of us. So those are issues that would be a problem.

MS. POST: And I -- I agree with what you said. It shouldn't be an issue for an agency at all as -- the employer's -- agreed to compensation.

One other thing I wanted to say. This goes along with what the company -- earlier is I -- when I looked at the legislation and how these two -- someone from a small state, these are huge bureaucracies we're looking at with Department of Labor, Department of Energy, and Health and Human Services all working together and we're going, okay.

(Laughter)

MS. MUELLER: And then you look at, and no offense to the Department of Labor, running part of this program through their Office of Workers' Compensation, I mean when we in the states sit out there and we look at a system that is not working very well, we point to the Federal government's program. So this is a real scary aspect to us to think about how fast are these benefits actually going to get to these people?

And I was reading an article at a southeastern newspaper in Iowa just last week and the person said, I don't care about those lump sum payments, all

I want is the medical. And they want medical today. And so this is a -- this is going to be a major, major issue, I think, for a lot of people is how fast can we roll this out, how fast can these benefits actually get in somebody's pocket. And you know, we talk about per -- speedy justice and, you know, your idea in Federal government about speed is a lot different than some --

(Laughter)

MS. HATFIELD: I've decided having just gone through workmen's comp issues with my father -- he's been retired for 15 years and we just now got workmen's comp.

MR. MICHAELS: And how long has he been --

MS. HATFIELD: Well, it's not that bad. I only started last year when I first met Dr. Michaels. I didn't know -- I mean being retired 15 years, these workers don't know that there's something that's available to them. That's -- they're -- they're -- they still don't know. And so -- and when you start with the -- with -- I'm sorry. I don't -- I don't mean to take a long time.

But when you -- when you start trying to -- to do this, you find that the contractor and the -- the people that -- workmen comp issues do -- they have no idea what to do and how to do it. They have absolutely no idea. When I started I drew it. I -- the administrators in Nashville, Tennessee who handles the ones in our -- and she didn't know. I had to walk her through it and say, okay, this is what they tell me you have to do, da-dah, da-dah, da-dah. And then we got it. But it's -- you had to walk -- walk 'em through it and tell 'em what to do, and they still don't know because I was -- I was trying to accomplish something else for my father and I was -- I said, okay, you have to go by the AMA manual, you know, and look it up and all that, and she didn't know what that was.

So how can they administer and give these workers what they rightfully need if they don't have the tools? So on paper it looks right but in reality, I don't know.

MS. TAYLOR: What it sounds like, though, is that you have -- there are two things that have to happen: that the workers who may have potential claims need to be worded as -- somehow it has to be told that they need to know what's -- what their -- what they can do, what can be done.

Then again, on the other side of that is -- are the workers' comp offices on how to administer or how to work with because it seems like there's not enough training on both --

MS. HATFIELD: Well, because it's a new -- I mean we're -- it's a new world here. People aren't used to this.

MS. TAYLOR: Right.

MS. HATFIELD: They're not used to not being filed because they're sick.

MS. TAYLOR: Right.

MS. HATFIELD: And you -- it's like in our area -- many doctors in our area who are administering these tests and everything, and if they administer 'em and if -- if this person has been sick but they don't find anything then they just -- they just move on.

MS. TAYLOR: Right.

MS. HATFIELD: And -- and a lot of things can't be found. I mean we're not -- the tests that they give aren't going to find everything. Let's face it. It's just not going to be there, and I'm sure that the doctors on the panel realize that. But if you're still sick, you're still sick. And if you've been exposed you've been exposed. So how -- how do you address those issues?

MS. SPIELER: I think that we should put as a separate item perhaps among the sort of breakdown of items that we should consider this afternoon the question of outreach and education for workers for state comp programs and for contractors and insurers and -- get direction on those issues and maybe also as an additional agenda item have the specific part of the discussion about what the panel members here -- the committee members feel are the primary roadblocks to effective implementation at the state level so that in case there are issues that the -- deal -- so why don't we now just direct questions to David about specific sort of the history and implementation of the bill. Linda?

MS. RUDOLPH: I -- I think I'm still a little confused about some basics, so I'm sorry. But I'm not sure I understand exactly the relationship between, like, what DOE pays for with the lump sum settlement and whether the contractors actually have to pay for anything else through the workers' comp system like permanent disability benefits, et cetera. So --

MR. MICHAELS: It's a very --

MS. RUDOLPH: And --

MR. MICHAELS: -- good question.

MS. RUDOLPH: Okay. And also, when you say so the contractors shouldn't be fighting this because of the fact DOE pays for it, is that really true or are they still going to want to fight the piece that they have responsibility for?

MR. MICHAELS: Let me step back and make sure -- but don't let me forget the various components of your question there. There are these three different or four different pots of money that will pay for benefits in this so -- if we look at the big picture.

First, for the diseases that are compensated through the Department of Labor's program, which are again chronic beryllium disease and sensitivity and radiation-related cancer and some silicosis, they are paid for out of a new fund established by Congressional act which is set up as an entitlement. It's mandatory spending. It does not ever have to be appropriated again -- be appropriated. It's above the budget caps, and it -- the department -- the Congressional Budget Office estimates that it will give out in benefits \$1.6 billion over the next 10 years -- or actually, over nine years 'cause the first year, you know, estimate -- going to get anything out, which is probably reasonable.

So that will -- that covers the diseases that we're -- we're not discussing today.

(Pause)

MR. MICHAELS: Diseases that are compensated through state workers' compensation programs, the contractor gets the bill. And different programs and different -- different contractors have different insurance systems. Most of our contractors are self-insured, which simply means the Department of Energy gets the bill. It goes to a different office within DOE depending -- at Los Alamos it would go into the Defense Programs Office. At, you know, Paducah it would go into the Environmental Management Office since it's a cleanup site. And that would come out of appropriated funds and in fact have to -- you know, it would be part of the budget and would have to compete with other funds, though that's a bill that has to be paid. There's no discussion about not paying that.

But that comes out of the Department of Energy funding. Except in those states where instead of being self-insured, premiums will pay. In some cases premiums were paid to an insurance carrier who will then play a very big role in -- we're likely to have some opposition there, though there are very few of those.

But much more commonly, premiums were paid to a state compensation fund, like Ohio. And it's my understanding that the Ohio State

Workers' Compensation Fund has announced that if we find a case to be work-related, they will pay those claims.

DR. BODEN: -- request reimbursement from DOE?

MR. MICHAELS: No, they have to be -- because -- we're -- we're

paying. You know, they -- they weren't -- we weren't -- you know --

MS. SPIELER: They got the premium --

DR. BODEN: Paid premiums.

MR. MICHAELS: -- premiums. We'll see what happens, but that was -- formal position. And so -- and as a result and the who pays who will affect the ease which we get people compensated in different states.

We have some interesting situations, though, where in some states -- like, it's my understanding that in Colorado where we've had multiple employers in one site that -- suits of different -- the carriers -- employers suing each other over who's responsible for this that when in fact -- and DOE's paying for the cost of both sets of employers and -- and insureds suing each other. So we're trying to pull back on that.

(Laughter)

MR. MICHAELS: So -- so -- like, for example, University of California, maybe the people from University of California will -- can address that. My understanding is we're self-insured. So if you get a bill from a workers' comp in -- workers' comp in California or New Mexico, the bill goes to us, to DOE, eventually.

AUDIENCE MEMBER: The University is self --

MR. MICHAELS: Yeah. So therefore, it just gets out of the DOE bill.

MS. RUDOLPH: But administered through the third-party administrator that you see --

MR. MICHAELS: Yes. So while there is opposition -- and you see -- barriers that exist. At the Pantex plant in Texas where -- it's a self-insured operation. We have a large well-known insurance carrier is our third-party administrator. And they're -- you know, they -- and they said to us, just tell us what to do, we'll do the right thing. So they understand that we're -- they're just -- they're the TPA, they're not at risk at all.

DOE -- set up a real easy screening program. The first cases of beryllium sensitivity were identified. Those workers were advised by Department of Energy and its contractors to file for workers' compensation. And of course, those claims were denied by the third party administrator saying these cases did not occur -- you know, we should have brought that -- you know, these were diseases of daily life, beryllium sensitivity.

(Laughter)

MR. MICHAELS: And it didn't occur at the work place, so the standard's null. And so this is exactly the -- the sort of barrier -- which we -- pull away. So that's what we're dealing with paying for -- just have to figure out the way to -- to take down all the barriers -- paying for it.

MS. TAYLOR: So then that question goes back to the -- committee. How -- you know, and I understand what I read about what our role is, but I'm still not clear on what it is that DOE wants us to do particularly?

MR. MICHAELS: I think DOE look -- looks to the great wealth of knowledge and expertise and experience on this committee to help us think of ways to approach these problems on every level.

MS. TAYLOR: Okay.

MR. MICHAELS: On every level. This is a very wide charter.

MS. TAYLOR: Okay.

DR. MARKOWITZ: Following that up about the width of the charter, and you want us to focus really on the non-radiation cancer, beryllium and silicosis --

MR. MICHAELS: Yes.

DR. MARKOWITZ: -- as I understand it. Well, the way it's written about the committee's objectives and scope, it relates in general to workers' compensation and compensation and policies within this area of DOE. The committee -- committee that's going to be -- that deals with the scientific issues in relation to radiation --

MR. MICHAELS: Correct.

DR. MARKOWITZ: -- beryllium?

MR. MICHAELS: And the --

DR. MARKOWITZ: Right. In the -- they discuss policy issues in relation to -- to this act?

MR. MICHAELS: Right.

DR. MARKOWITZ: And so we have two gaps. One is who discusses -- how do the constituencies of this get feedback to DOE about the

radiation, beryllium, and silicosis -- produce a policy? And secondly, -- scientific study on the non-radiation, beryllium, and silicosis issues, there's -- HHS's role with NIOSH seemed to be to appoint these panels, period.

MR. MICHAELS: Correct.

DR. MARKOWITZ: There are no -- there's nothing in the act that gives guidance about exposure criteria, about -- and the like from these other conditions. And so the question will be how will those be established?

MR. MICHAELS: I think that's -- discuss that this afternoon. How should these -- and we have a program -- piece of this agenda just to talk about what information should these panels request, how -- decisions on what -- what scientific basis. That -- and that's up to us, and that's -- we look -- that's up to the Energy Department. We look to this panel for advice on that.

DR. MARKOWITZ: And the first part --

MR. MICHAELS: The first part, obviously this panel can provide -- advice to anyone it chooses. But --

(Laughter)

DR. MARKOWITZ: -- we want to give unsolicited advice -- that even though -- you want us to focus in on the non-radiation, non-beryllium, non-silicosis outcome that it still is within the purview, although not -- the purview of the committee to examine the comments on those -- the other aspects of the Act.

MR. MICHAELS: That's correct -- within -- national administration, while each agency has certain -- we're one administration. And when new policies get developed by one agency they go through an interagency process where other agencies comment on them, especially where they're effective. And -- this committee has advice on the workings of any of the things related to this certainly they should be giving them to DOE in -- in the interagency process. DOE could raise those as well. And that would be important if you think there are issues around workers' comp in general. I don't think there's any limitation to what you can and can't address.

MS. SPIELER: And certainly, because of the problem of having people not sure where their claim belongs there's going to be a fair amount of interaction, I think --

MR. MICHAELS: And --

MS. SPIELER: -- of this committee.

DR. MARKOWITZ: You know, if you -- if the Secretary this afternoon is proposing legislation that ties in workers' comp to the lump sum payment, then the -- there's no distinction between the workers' comp provisions and the lump sum --

MR. MICHAELS: And furthermore, without the additional legislation that we're proposing today, there's -- for many workers to apply to both systems, to apply through us and through the Labor. So -- so we really are very closely integrated -- need to be integrated with that system.

MS. SPIELER: Go ahead, Les.

DR. BODEN: Let me just take that one step forward. The way I understand what the legislation says, even for the designated illnesses, silicosis, beryllium, and cancer, for any of those they have to be disabling to qualify to be Federal -- whatever that means.

MR. MICHAELS: Right. We -- let me -- before you -- in the executive order we've attempted to address -- to clarify that "disabling" is not being used in the work-relatedness concept but more in the impairment concept of disabling and that we intend to clarify that in the legislation being presented today. But in the executive order we try to make clear that when we say "disabled by cancer," for example, that doesn't mean the person had to have gotten cancer during their work life. They could have gotten cancer afterwards and still be disabled.

DR. BODEN: Right. But -- but in other words, you could have -- silicosis and not be considered disabled or not be 1/1 or greater and end up under the purview of this committee?

MR. MICHAELS: Correct.

DR. BODEN: So really, in that sense we cover all the illnesses and the question of how the illnesses get divided between the state and the Federal systems I think is not -- still not yet fully defined. And in particular, even with your clarification with what "disabling" means, there's going to have to be some refinement of that term so that there's guidance by the Labor Department if they're doing the triage about where to put people. And it would seem to me that that would be part of something that we're supposed to be advising on --

MR. MICHAELS: Correct.

DR. BODEN: -- is that correct? Okay.

MS. SPIELER: In -- do you have something specific on the -- for David right now? Let me make a suggestion. I think we need to have our

required presentation on the functions -- oh, yes. Glenn?

MR. SHOR: Yes?

MS. SPIELER: Is there anything you would like to ask or add to this discussion before we move on?

MR. SHOR: The -- the main thing that I'd like to have a better sense of is what sort of analysis has been done to identify what the population is that's out there. Is there any sense of, you know, with the people who have been employed at these contractors, are there estimates of those numbers? Are there -- you know, and then the second question is are there -- is there any sense of prior claims that have been filed by any of these people that have been disputed that haven't -- haven't been resolved in the past?

MR. MICHAELS: Just briefly, we have --

MR. SHOR: -- one is sort of what's the population at risk, and then the second one is what's the --

MR. MICHAELS: Well, we have some rough estimates on what we believe to be a population-at-risk figure, though it's not particularly relevant. I mean to say a number like 600,000 across a complex means nothing in terms of what the exposures are. What we don't have are numbers of people who are at risk for different illnesses or different exposures, or even numbers of people who worked in different processes, and that may be something that you might recommend that we do.

What was the second question?

(Multiple participants responded, "Prior claims.")

MR. MICHAELS: We've attempted to gather -- there is no central repository. We've -- we've attempted to gather. We know of, you know, claims in the dozens that have -- that actually have been paid and also in the dozens of ones that have been denied. But there is no central system for keeping track of these, and obviously, one thing that we've considered that we would move forward is once, you know, we get this up and running try to keep a very good accounting of that because we expect and in fact have been asked by Congress and by the -- in the executive order to do a reporting on the ability -- our success in adjudicating these claims and moving them into workers' compensation.

But right now I can't offer you very much. We do have some data which we could provide later on. But it's not particularly useful, I think.

MS. SPIELER: And I think Kate may address some of those

issues --

MR. MICHAELS: Yeah.

MS. SPIELER: -- in her presentation. What I'd like to do is move on and do our required presentation on the functionings of Federal advisory committees and then take a break.

(Pause)

Federal Advisory Committee Act Orientation

MS. SAMUEL: Good morning. Do I need to use a microphone?

MR. MICHAELS: Yes, for the transcriber.

MS. SPIELER: For the -- for the transcriber, yes. Why don't you just take that one?

MS. SAMUEL: Okay.

(Pause)

MS. SAMUEL: Okay. I believe you have a presentation in your handout of the Federal Advisory Committee Management.

(Pause)

MR. SHOR: What tab is it?

MS. SAMUEL: Glenn won't have it.

MS. SPIELER: It's not in the booklet.

(Pause)

MS. SPIELER: -- fax number?

MR. SHOR: Yeah, I'm on it right now, so --

(Laughter)

MR. SHOR: Maybe -- is there an agenda that's been passed out this morning?

MS. SPIELER: Yes.

MR. SHOR: Why don't I get off for 10 minutes and then -- take and fax that to me?

MS. SAMUEL: Tell him to wait --

MS. SPIELER: Why don't you wait -- Glenn, wait for the break. We're going to have a break right after this and then you'll have the agenda.

MR. SHOR: Okay. Great.

MS. SAMUEL: Okay. I'm Rachel Samuel. I'm the Deputy Advisory Committee Management Officer at the Department of Energy. And I'd like today to go over some roles and responsibilities, some brief background on Federal advisory committees, the purpose of DOE advisory committees, some concerns and sensitivities, expectations, and then answer any questions that you may have.

"Roles and Responsibilities." "The Advisory Committee Management officer." James Solid is the Advisory Committee Management officer, and he was appointed as Advisory Committee Management officer in March of 1997 by Frederico Pena. And his role is to -- he is responsible to exercise management oversight control and supervision of DOE's Advisory Committee Management Program and advisory committees. And I serve as his deputy.

The designated Federal officer. That is required by the Federal Advisory Committee Act, and he or she must approve the agenda, must attend all advisory committee meetings, shall adjourn meetings if it's in the interest of the public to do so -- so for instance, if the meeting should get a little rowdy --

(Laughter)

MS. SAMUEL: -- in that case it might need to be adjourned.

(Laughter)

MS. SAMUEL: And chairs the meeting when directed by the agency head to do so. And the designated Federal official for this particular committee is Judy Keating, and she is acting in that capacity here.

And you advisory committee members. You, of course, are here to provide advice and recommendations to our department, and we certainly appreciate you being here to do that.

"Legal Requirements." "The Federal Advisory Committee Act." And that's a means of structuring and monitoring the activities of groups established or utilized by Federal agencies as a source of advice and recommendations. There was some concern regarding potential anti-trust violations and government leaders were receiving biased advice from self-serving interests, and therefore the Federal Advisory Committee Act came into being in 1972.

The Title 41, Code of Federal Regulations Part 101-6, Federal Advisory Committee Management is the GSA rule on Federal advisory committee management. And the advisory committee activities are regulated by the committee management secretariat at the General Services Administration. The committee management secretariat has oversight responsibilities for all Federal advisory committees.

And DOE M510.1-1, Advisory Committee Management Program is an internal document that we have at the Department of Energy that sets up procedures on how our departmental advisory committees operate.

"Purpose of DOE Advisory Committees" is to provide advice, ideas, and diverse opinions, to get public input into the government decision-making process, and since advisory committees serve without compensation your information is just valuable to us.

The role here is solely advisory, and it prohibits committees from assuming authority or responsibility for DOE functions; lobbying the Congress, the executive branch, or the public; and you're to advise on the development, implementation, and evaluation of policies and programs in a defined DOE subject area.

Now, under "DOE Advisory Committees," they are established in various ways. They are established either by the president, by statute, or by the agency. We currently have at the Department of Energy 23 Federal advisory committees. We have one presidential, six statutory, and 16 agency-created committees.

The next page is just an eye-chart of all of the advisory committees we have at the Department of Energy, and as you see, yours is one of the new -- newly created ones, and it appears last on the last. They're all alphabetical.

We've got several advisory committees at the Department, and a couple of them I'd like to mention. The National Petroleum Council is one of our oldest advisory committees, created back in 1947. And the High Energy Physics Advisory Panel is also one of our oldest, our second-oldest committee, and that was created back in 1963.

(Pause)

MS. SAMUEL: Okay. Under "Concerns and Sensitivities." "Conflict of Interest." And I'd like to ask. I don't think there are, but are there any Federal advisory committee -- you're a Fed. Okay. Gotta go over all of the Federal regulations --

MS. SPIELER: Two Feds.

MS. SAMUEL: Two Feds. Okay. All right. Now, this is from the Office of General Counsel.

Now, committee members who are Federal employees have the same conflict of interest statutes and regulations that apply to them in their regular government employment. For members who are not Federal employees, while the restrictions of most of the statutes and regulations do not apply, the Department has a policy regarding the conduct of advisory committee members to ensure integrity in the committee process and the credibility of its work.

"Financial Conflicts." For members who are Federal employees, the participation prohibition of 18 USC Section 208 applies to you with respect to their involvement in the advisory committee. The criminal statutes provide that government employees may not participate personally and substantially as government employees in any particular matter in which to his knowledge he has or his spouse, minor child, general partner, organization in which he is serving as an officer, director, trustee, general partner, or employee or any person or organization with whom he is negotiating or has any arrangement concerning -- prospective employment has a financial interest.

This means that a member who is a Federal employee may not participate in any matter that would have a direct and predictable effect upon any of his or her personal financial interests unless a waiver of the participation prohibition exists.

While members who are not government employees are not subject to the -- to the criminal and civil sanctions of the statute, there are similar standards adopted by the Department that apply to them. Such an advisory committee member should not participate in a committee meeting business involving the particular matter that would have a direct and predictable impact on any company or organization with which he or she is associated or in which he or she has a financial interest without discussing the situation with the Department's designated agency ethics official. Whether you will be able to participate in a particular matter that will have a direct and predictable impact on the -- on the intent with which you are associated or have a financial interest will depend on

the nature of the association or the amount of the financial interest.

All members should advise the designated Federal official of a potential conflict in advance of any discussion of a topic that would have a direct and -- predictable effect upon companies or organizations with which they are associated or they have a financial interest. The designated Federal official will then discuss this with the agency ethics officer and come up with some sort of solution for that.

"Restrictions on Activities." All advisory committee members shall adhere to the following general conflict of interest requirements. A member shall refrain from any use of his or her membership which is or gives the appearance of being motivated by the desire for private gain. A member shall not use either directly or indirectly for private gain any inside information obtained as a result of committee service. A member shall not use his or her position in any way to coerce or give the appearance of coercing another person to provide a financial benefit to the member or any person with whom he or she has family business or financial ties. A member should seek immediate guidance if he or she is offered anything of value as a gift, gratuity, loan, or favor in connection with committee service.

I think I can leave out the rest of it. Okay.

(Laughter)

MS. SAMUEL: Now, that's generally given by the general counsel ethics officer, and -- yeah, they're not here today, so they asked me to do that part.

Now, "Scope and Objectives of the Charter." They were set by the Department, and it's important for committee members to know what the objectives of the charter are and to stay within the parameters set by the Department. The committee and DOE will jointly determine and agree upon what the committee will concentrate on and the extent to which the committee will take initiative or reactive roles and what issues will be addressed.

Under "Membership Balance and Representation," generally fairly -- members are fairly balanced in relation to the points of view represented and the functions to be performed. Individuals are selected because of their experience in a particular discipline and represent the user's industry organization in the public and private sectors that would or could be directly affected by the work of the committee.

Balanced membership also brings to light to us at DOE that dialogue, interactions, and negotiations among persons representing different technical disciplines and point of view.

"Expectations." "Commitment." Expect you to understand the objective, understand the solely advisory role of the committee, and the course of action, mission, or objective. And if in doubt, please raise questions with the Department.

"Preparation." We'd like for you to devote sufficient time to the work of the committee and to familiarize yourself with the materials in advance of the meeting. We also like for you to be frank and to have candid observations. Those are quite helpful to our Department. And objective recommendations and conclusions, to avoid conflict of interest, and for all of our advisory committees to be successful. And of course, that in -- that includes providing us with your advice and recommendations, and I think if you do that then your committee will certainly be successful.

Are there any questions? Okay?

DR. BODEN: Yeah. Just one question that I think maybe -- there are three people on this committee who are involved in a former workers' medical surveillance project which may come up as discussion topics in terms of how they should be handled, and I guess --

MS. SAMUEL: Mm-hmm.

DR. BODEN: -- we -- we should certainly, I guess, let everybody know that but also it's not clear whether there should be any restrictions on our participation in discussions about how the former worker medical surveillance projects should be a part or -- or not of this process.

MS. SAMUEL: That's definitely something that you'd need to take up with the Office of General Counsel and with the designated Federal officer here.

DR. BODEN: And what do we do today?

MS. SAMUEL: Well, just announcing that there could be a potential issue, that's, you know, certainly the beginning of it and the designated Federal officer can talk to our contacts back at the Department and we can certainly work out whatever the issues may be with each one of you that may be involved in --

MS. SPIELER: Who are the three? Les, me, and --

DR. BODEN: And Laurie, right?

MS. SPIELER: Oh, and Laurie Welch. Okay. Yeah. We definitely do need to follow up on that.

MR. MICHAELS: We have a number of people here who work for other Federal agencies or for state agencies as well.

MS. SAMUEL: Mm-hmm.

MR. MICHAELS: This program could have a direct appreciable, you know, expected impact on those agencies. There -- would there be any limitation to their ability to -- to give us advice in relationship to those? That's -- in some ways that's why they're on the committee.

MS. SAMUEL: Mm-hmm. I don't think there are because it wasn't included in the presentation.

(Laughter)

MS. SAMUEL: I'm sorry. I'm not -- I'm not trying to be funny. But the -- the note that I received from General Counsel didn't have anything concerning that, and so I -- I -- I suspect that that may not be an issue.

MS. SPIELER: Any other questions? Rachel, I understand that you've been very instrumental in making this happen quickly, and so on behalf of the committee I'd like to thank you for all the work that you've already done and for the presentation today.

MS. SAMUEL: Thank you very much.

MS. SPIELER: We will take a 15-minute break and reconvene at 10:45.

(Brief recess)

MS. SPIELER: Before we get started on the next agenda item, I'd like to ask the people who -- Don, since we did introductions this morning both at the table, Laurie, and in the audience, to introduce yourselves. Just say a couple words about where you're from. Laurie?

DR. WELCH: I'm Laurie Welch. I'm an occupational physician. I have a practice here in Washington. I'm on the faculty at George Washington University and work at a big hospital here in town, and I've been working for four or five years now with the former worker medical screening programs for DOE workers.

MS. SPIELER: Okay. Don?

MR. ELISBURG: I'm Don Elisburg. I'm currently in Washington -- other places.

(Laughter)

MR. ELISBURG: I'm here really representing the -- and the Center for -- doing work in this general area of worker compensation for a long time and the DOE --

MS. SPIELER: Thank you. And -- oh, right. Paul?

MR. SELIGMAN: Yes, hi. Paul Seligman, Office of Health Studies.

MR. TURCIC: Pete Turcic. I'm with Department of Labor, and I'm currently the SA -- implementation of the --

MS. SPIELER: Anyone else?

(No response)

MS. SPIELER: Okay. I -- our next agenda item is a presentation and then discussion on the issues of the state comp programs that Kate Kimpan from DOE is going to lead. And let me just say, after that we're go -- if -- I would like to start the discussion before lunch regarding the issues and barriers that the members of the committee see as the issues that need to be dealt with. And then when we reconvene at 2:00 what I would like to do is have a list of issues and -- that we would like to discuss and how we would like to leave them at the end of the day.

Yeah?

PARTICIPANT: In between 12 and 2 how is the -- how is -- how are things going to --

MR. MICHAELS: You will arrange for your own lunch at noon, approximately.

MS. SPIELER: Let me just -- Judy has suggested that we go over to the DOE building immediately, those of us on the committee, so that we can get our passes to get into the building, and then eat at the DOE cafeteria because there may be --

(Laughter)

MS. SPIELER: I wondered.

DR. BODEN: We have a culinary --

MS. SPIELER: Right, right, right.

(Laughter)

MS. SPIELER: Because there may be -- there are a lot of invitations that have gone out for the 1:00 briefing and there's a concern that there will be a backup on getting passes.

MS. KIMPAN: And you will pass precisely three hot dog carts between here and there.

MS. SPIELER: And is that -- are you suggesting that that --

MS. KIMPAN: -- third, that's right.

MS. SPIELER: -- cafeteria?

MS. KIMPAN: I'm making no such suggestion --

(Laughter)

MR. MICHAELS: The other thing is there is actually a nice restaurant in the Smithsonian. If you actually do have 45 minutes to an hour, you can just continue walking right across the street.

(Simultaneous comments)

MR. MICHAELS: -- that's only --

MS. SPIELER: In any event --

MR. MICHAELS: -- make a reservation.

MS. KEATING: I'd like to mention, though, that the event at 1:00 is going to be very brief. It's 1 to 1:20, so if we --

MR. MICHAELS: Yeah.

MS. KEATING: -- you know, we want --

MR. MICHAELS: Yeah.

MS. KEATING: -- be aware that we need to be --

MR. MICHAELS: Or the cafeteria is actually not that bad, and it's right there. It's right -- it's right down the hall from where the event is. It's

probably worth just doing that.

MS. SPIELER: Okay. And then -- is there a reason, Judy -- Judy? Is there a reason that we're not convening -- reconvening until 2 if the event at --

MS. KEATING: Well, I -- I did not know when the -- when we made up the schedule I didn't know what the timing was. I wanted to give enough time. So we can certainly reconvene immediately after.

MS. SPIELER: Why don't we plan on reconvening here at 1:30 then?

MR. MICHAELS: Or whenever --

MS. SPIELER: Or as soon thereafter as we can come back. In other words, as soon as it -- it ends over at DOE we should come back here.

(Simultaneous comments)

MR. BURTON: Can there be, like, five minutes so we can get our bags down before we all go over?

MS. TAYLOR: After the event I won't be returning.

MS. SPIELER: Okay.

(Simultaneous comments)

MS. SPIELER: Okay. Is Glenn back on the telephone?

MS. KIMPAN: No, he's not. And he is -- it's --

MS. SPIELER: It's past the time.

MS. KIMPAN: Yeah, but his fax may still be spitting out stuff on the same phone line.

MS. SPIELER: Okay.

MS. KIMPAN: So first we'll get Delphine, then we'll get Glenn,
so --

MS. SPIELER: Okay.

MS. KIMPAN: If I start that would probably --

MS. SPIELER: Yes, why don't you?

MS. KIMPAN: -- call the spirits in.

(Laughter)

**State Workers' Compensation and
Status of Agreements with the States**

MS. KIMPAN: I'm Kate Kimpan, and I have a prior pedigree in the state workers' compensation, administering the state of Minnesota. And that just sort of has to do with part of the state stuff I'll be talking about.

I was happy to hear during the FACA presentation that --

(The proceedings were interrupted by the telephone ringing.)

MS. SPIELER: See? Yeah, you did.

MS. KIMPAN: Hello?

MR. SHOR: Hi. It's Glenn.

MS. KIMPAN: Hi, Glenn. You're back.

MR. SHOR: Thanks.

MS. KIMPAN: We just started.

MR. SHOR: Okay. Great.

MS. KIMPAN: I was saying how I'm Kate Kimpan.

(Laughter)

MS. KIMPAN: During the FACA presentation, you know, I heard that everything that you all need to be aware of has to do with predictable effects, and for those of us with any work comp history at all, I don't think we'd even worry about any predictable effects, so that's -- we're probably all free and clear on that one.

I wanted to talk a little bit about, first, a very broad overview. And I can certainly take questions later at this time if anybody wants more specifics. But you all have in your materials the Task 2 Report, the report looking at how different state systems for workers' compensation take care of workers. One of

the things that this table knows is that every state system is quite unique on a number of different attributes. The mandate during the Task 1 and 2 Report preparation was to look at those, and I've passed out snappy visual aids. I don't know if I can speak this one sitting down, but I'll try.

The states on the front page are those states which we're mandated to compare within the past -- Task 2 exercise and did so. There is information in your book assembled by the AFL-CIO that has many of these measures for other states as well. I wanted, as I said, to go over in very brief order the broad comparisons that were done, and then we'll get to some of the specifics that we found in the states, touching back on pretty much every issue that was raised in the earlier session. Some food for thought as you proceed into your afternoon.

You can see the states on this first page that were included in the Task 2 Report specifically. Alaska, California, Colorado, Idaho, Illinois, Iowa, Kentucky, Nevada, New Mexico, Ohio, South Carolina, Tennessee, Texas, and Washington. Those states are states in which DOE has or has had major facilities.

I think that we have found that there are certainly employees who have worked for DOE that are currently domiciled in every state I've run into in the country, every jurisdiction, so for those people who used to work at a DOE facility in a particular state and now live somewhere else the workers' compensation would be in the state at which they were potentially exposed, made ill, and worked. However, state agencies all around the country may well get telephone calls, queries, questions.

So I think as part of what we might consider as we look at outreach and to whom we need to direct information there are certainly work comp administrative groups and the like, the IAIABC, the International Association of Industrial Accident Boards and Commissions, organizations like that that -- that have contacts in every state. These certainly aren't the only states in which we will have questions, in which there will be concerns.

We indeed have some facilities where people are employed in one state and working in another or living in another. A lot of our folks in Savannah River live in Georgia. A lot of our folks in New Mexico are employed by California. So we have those kinds of issues going along -- the other western states. But these are the states that were specifically included in the materials that you have in the Task 2 Report.

If you flip to the second exhibit, the system attributes that were included in the Task 2 Report. After some analysis and discussion and a group from many agencies and many representatives, these system attributes were those that we chose to focus on in terms of comparing what the state provisions were regarding those differences.

All state workers' compensation systems have, like the Federal workers' compensation system, a provision to take care of medical care if you've been made ill or have been injured at work. Those provisions are -- are, first, dollar medical coverage, meaning unlike our typical healthcare coverage there isn't a co-pay and deductible. Dr. Burton would probably correct me that indeed waiting periods are equivalent to a co-pay or a deductible, but there is no out-of-the-pocket co-pay or deductible from an injured worker. That's, as you folks know, a real big difference between this system and other care delivery systems.

One of the big variables that I know that Vikki and her family have struggled with are costs of things like medication and oxygen, which in a workers' compensation model would be covered, in a non-workers' compensation model, general healthcare, there's some real problems. That's something that certainly is an issue for our workers.

Our workers are largely well insured because DOE requires contractors to provide healthcare insurance, but that insurance does not necessarily, depending on the state, depending on the contractor, depending on when you worked there, cover something like special food in your -- if you're unable to eat. It does not necessarily cover your oxygen. It does not necessarily cover the other kinds of therapies that you might need as where all of where with our current non-occupational medical care.

So the system attributes that we focused on that have broad differences between specifically the Federal system, the Federal Employees Compensation Act or FECA, and these state systems are death and survivor benefits, disease coverage, medical benefits, location of rehabilitation provisions, preexisting conditions and prohibitions on such conditions, benefit offsets with other systems, other systems -- interactions, how the appeals process works, and statutes of limitations.

There's an immense amount of detail in the Task 2 Report about some of these. Some of you around the table, I know, are already very familiar with these and probably profoundly familiar with what the goings-on in your state are, but the point of the findings of our exercise indeed was that there's a wide variety of -- of system coverage for these different things, things as basic and as important as who chooses your medical provider.

And because, as David discussed earlier, the employees that we're talking about distinct from the Department of Labor program, the employees that the DOE Advocacy Office as assigned now trying to help is about getting access to the state system. It's not a Federal remedy. It's about providing access to the state system in which that worker is eligible for benefits. So there are systems in which when you get access to the system you get a very high wage -- placement rate and choice of medical provider. There are states in which you don't, where you do not choose your medical provider; your employer or your insurer does.

There are states that have ultimate limits on benefits, either caps on the dollar amounts for a temporary total, those wage replacement benefits you get if you're temporarily unable to return to work, as well as limits on the duration of those benefits. In the Federal system, in FECA there is no limit on the duration of benefits. If I am made ill out of the course of -- in -- in -- in the course of my employment I get benefits for life under FECA and under many state systems. There are other states which have limits on the duration of those benefits. New Mexico limits it to 400 or 401 weeks.

So there is a wide array of different remedies that will provide -- be provided to workers who were potentially working in similar occupations or similar durations in similar facilities. There are going to be very different remedies available to those workers by definition of the fact that they are state -- state workers working for private sector contractors -- workers in a state working for private sector contractors, therefore eligible only for those state workers' compensation benefits.

The sources of information, which I'll spare you all heads hitting the table and not read. But I just wanted you to know where and when these materials were from, so if you want to raise your hand and go ooh, ooh, ooh, your wage replacement rates are wrong for State X, it's because these were the current publications available to us at the time we began a review of the state provisions. Most of these publications here are routinely made and available through the sources that you see. Some come out annually; some every other year. But they - all -- all of these different sources provide a myriad of information on how state

workers' compensation systems work and make some comparisons with one another.

The next exhibit is discussing wage replacement rates. Now, that's actually an inaccurate title. Those -- these are wage replacement caps, and so what I wanted folks to see, this is an exhibit right out of the Task 2, one of the appendices. And the point of this is just to show you what the typical income that would be capped in -- in the states named might be.

The reason this is important is sort of twofold. One is that DOE workers were often more highly paid than other manufacturing or other workers in the state that might not have been in manufacturing. Many of our DOE contract workers have been union employees and have benefits reflecting that in some ways. To the extent that you're seeing this wide difference in the weekly maximums, these -- these weekly maximums are developed slightly differently among the states, but they basically reflect some portion of the typical wage in the state, called the statewide average weekly wage.

Some states do it slightly differently, but in all systems the typical state workers' compensation benefit is reflective of that state's economy. So it

isn't all together surprising that some states have a higher weekly benefit than other states. Whether or not DOE workers are likely to have hit that cap, of course, depends on what their pre-injury wage might have been, and this just gives you an idea.

As you can see, the most generous benefit system in terms of making a person the closest to whole or the system which people would be very unlikely to -- to -- to max out on before their wages were replaced is the Federal system. It -- it replaces wages to a very high level. Illinois and Iowa also have very high wage replacement rates.

As I say, the others aren't arbitrarily set. They're set reflecting the state's economy, but to the extent that it times our workers may have been doing better than a typical service worker in that state, there may be implications in certain states where a worker making a certain wage would indeed hit a cap and -- and have their benefits capped where if that worker had been a Federal employee, eligible for Federal benefits, it's unlikely that those workers would hit a cap and therefore have their benefits limited.

Again, these are simply total disability. The wage replacement rates that you get when you're temporarily unable to go to your job because I fall down and break my leg. One of the things that we saw as we were doing this, and as I say this room is just intimately familiar with, is that we hear a lot about what -- what workers' compensation is and isn't able to accomplish. Workers' comp was a system largely set up to serve people with injuries. And so it isn't unique to DOE that state workers' compensation systems have a difficult time with illnesses. I think that the administrators in the room would tell you that those one or two percent of claims that are for illnesses around the country in workers' compensation have quite some challenges of getting into state systems in general.

So part of what we found in looking at DOE facilities and what the experience of our workers has been is a -- a typical, if you will, experience for workers with illnesses and the barriers and challenges they may face in trying to get those work-related illnesses and conditions compensated in work comp.

In workers' compensation terms, the Federal Department of Labor defines an illness as anything that took more than one incident to happen. If I fall down and break my arm, that's an injury. If I get a back condition, it is properly classified, unless it was from an acute injury, as an illness. Repetitive stress injuries, carpal tunnel are properly classified as illnesses. So that's the workers' compensation distinction that is held by the Bureau of Labor Statistics in tabulating injuries versus illnesses around the country.

So illnesses take longer than one exposure to occur. And of course, the illnesses that we're talking about, cancers and -- and the like, you know, part of what we're talking about, toxic exposures, of course, are well into

that illness category. But as you read about illnesses Federally from the Department of Labor and the Bureau of Labor Statistics, keep in mind it basically is anything that's not an acute injury, anything that's not a slip and fall, if you want to use Virginia's verbiage.

Around the complex the next exhibit is just called "Insurance Arrangements." And it's -- it's -- it's sort of a -- it's as complex and contorted as -- as many of the other things that you're faced with helping us on.

There are different state arrangements. There are state systems called exclusive state funds, meaning the only provider of workers' compensation insurance in that state is indeed the state. By coincidence, there are only a handful of state funds in the country, and that handful is disproportionately reflected in DOE facility terms. Washington, Ohio, and Nevada, which actually became not a state fund a little bit more than a year ago, are exclusive state funds, meaning that they're the only provider of work comp insurance in those jurisdictions. Even that statement has a parenthetical which says unless you meet the state requirements to be a self-insured employer, which can also happen, even within an exclusive state fund. And every state in the country has some provision or another for how self insurance works. There's only one state that prohibits it altogether.

Another unusual attribute of one of our states is that Texas is the only state in the country which is a voluntary subscription state. What that means is there is no state requirement in Texas that an employer have workers' compensation. Workers' compensation emerged as an exclusive remedy around the turn of the century. It grew up differently in every jurisdiction. The first one was in Wisconsin in 1913. And every state except Texas requires that employers, with big exceptions for things like family firms and small businesses, must purchase workers' compensation insurers -- insurance to cover their employees.

If you do not have workers' compensation insurance or if you are injured in a non-work comp arena, you have the right to sue somebody in court and say, this person hurt me, I want money from you because you hurt me.

Workers' compensation replaced the Tort system, and except for the railroads in this country, the Fila system. That's still the remaining tort system. Pretty much all jurisdictions require workers' compensation coverage. If you're found not to have purchased, to be illegally avoiding that provision in states, you open up the Tort possibility and it is then, as Kate Kimpan or as the employee, the only remedy I have if I am hurt or ill. In Texas an employer has the right not to purchase work comp. That's a legal status, and what that means is an employee of a Texas employer who does not have workers' compensation has the right to sue in Tort.

It is the -- there is some research that's been done in Texas to suggest that most employers who are not purchasing workers' compensation from

an insurance company have basically worked up a system within their corporation to insure those workers against injuries at work in a very similar system to work comp, the difference being workers' compensation in addition to wage replacement and medical care also provides a cash benefit, a wage replacement-determined benefit for permanent injuries. The easiest example is I get my finger amputated in the course of my employment and there is a disability benefit which translates into -- ultimately into money associated with that permanent partial disability.

The folks in Texas that aren't doing work comp insurance are basically doing medical care and wage replacement. Like other jurisdictions, they have a very different method of doing the permanent disability thing. That's the only state where that's the case.

FECA, the Federal Employees Compensation Act operates much like an exclusive state fund in terms of how the system looks if you were trying to speciate these different systems. That's sort of how it looks.

In a different -- in addition to what the definition of the state insurance climate is like this, there are a variety of relationships that employers can have with insurance companies. There is self insurance, which is what most of our facilities are, meaning that I show the state that I have adequate resources financially to cover my own workers' compensation illnesses and injuries and all of

those payments. If I self-insure as an employer, I can distribute those benefits myself, I can make all decisions myself and I can pay those workers myself.

You heard the words "TPA." That stands for third party administrator. Most entities in our country that self-insure are large or are conglomerates of small similar businesses. To the extent that some corporations run their own risk management and have work comp experts, that's one way to self-insure.

Another way to self-insure is for me to show that I'm financially viable to do so and then to hire an insurance entity called a third-party administrator to help me wade through the claims, to make disability determinations, to make basic compensability determinations. So there are a variety of different systems that DOE and its many contractors have had. The basic three are self insurance where you use a TPA or do it yourself, something -- you know, a private insurance policy -- I go to Insurance Company X and I buy work comp insurance. They assess my risk and I pay them a premium much like we all pay our automobile premiums and the like.

There's a thing in workers' compensation called a private retro policy, which is I go, if I'm big enough and can convince an insurance company to

do so, I buy a policy based on a very broad estimate of what my costs and risks may be, and then in some routine fashion, quarterly, annually, I resolve the differences between what we predicted I would pay and what I would actually -- what I've actually paid. Sometimes I would get money back as the employer, sometimes I would have to make an additional payment.

There are also state retro policies in our exclusive state fund states. So in any one state which looks like X, Y, or Z, you could have any of these other combinations of things going on and if you look throughout time where you might have three or four or five contractors through time. Those contractors may have each done it differently, and those contractors may have each been subject to different state laws. And in work comp, the date of my injury defines the benefits for which I am eligible in every state in the country. So there are, oh, I don't know, any mathematicians here? Almost endless possibilities of combinations of relationships that are going on.

We may have a contractor in an exclusive state funds state who was self-insured for one period of time going to a contractor that had a state retro policy going to a contractor that just uses state fund. And that could all be in the same physical location, and I may have been an employee working for all of those entities and as far as I knew, I just went to work at the same place every day. So even when it looks sort of simple and we think that the target has stopped moving, indeed it -- it may not have. And I know that the states represented here are all different examples of that in -- in all the ones that we've dealt with.

So there is an amazingly complex task here just to understand those insurance arrangements. Those complexities may not or may affect our difficulty or ease in delivering benefits to these workers.

If you flip to the next one, I think it's probably what the -- the first slide might have been other than catching people up. The main barriers to workers' compensation success, I'm talking about for illnesses for DOE workers based on the Task 2 Report. As I said, for the state administrators these will not seem unfamiliar for those people in your states that have had illness claims, claims that don't have a distinct and discreet moment of injury that occurs at the work place.

And the big -- the broadest categories of difficulty for our workers has been twofold, and of course, those aren't as simple as -- as they might seem either. Difficulty in establishing causation. Every state requires that my illness be out the course of my employment. And there basically were two different types of causation difficulties we've run into. Causation one, there's -- the first type of causation is I didn't do it. I'm the employer of the contractor and -- and I -- or you don't have it. I say you don't have the condition for which you're applying for benefits.

That is a common -- the berylliosis folks in Texas, you know, would be an example of causation, too. You have it but I didn't do it, okay? So there are basically two different ways that causation is a real problem for these workers. The first is establishing that they have a work-related condition. There - - there can be difficulty in showing that. And then secondly, establishing that the person to whom you are making a claim is responsible for it, okay? There are folks, for instance, David alluded to in Colorado that are having difficulty because there were three consecutive employers at the same facility and all three employers' representatives stipulate that I've got a horrible disease and they know it's caused by work but they're all saying I didn't do it, it must have been during that time when you worked for the other employer. Those are some of the real difficulties in establishing work-related causation that our workers have experienced and indeed will experience.

The other sort of prima facie difficulty of these claims that may be from exposures from a long time ago are the statute of limitations. Now, there are a couple of different things going on with those. There are statutes of limitations that are very clear. Pennsylvania has one that says if you do not make a claim within seven years of the last day you worked it is non-compensable, end of discussion. So for workers who took 10 years to present with the disease, there is no workers' compensation coverage for those workers, even if my employer is still there, they're standing there actively but I no longer work there.

The bottom line is there are variations in the types of statutes of limitations you see below but, David alluded to this earlier, every state in the Task 2 Report and every state that I'm aware of and have spoken with the administrators, and that is most of the jurisdictions, will allow a willing employer to pay a claim without regard to the statute of limitations.

Okay. The statute of limitations is a provision within the workers' compensation statute which as an employer I can use as a defense to a claim. If I'm an employer who is willing to pay and I say that I made Judy ill and I'm willing to accept Judy's claim, there is no state -- say, Colorado -- who will protect me from myself.

Okay. In every other state, if I say I'm willing to pay Judy's claim, they don't care if the claim's 80 years old. If Kate says she's willing to pay and she's got a pocket deep enough to do it, I can pay Judy's claim. They're not going to impose on me my statutory protection as an employer.

Colorado's system has a statute which the way it is set up it has two additional difficulties, but one is it is the only system I have found that indeed the state agency as part of its enforcement of the statute will tell me as the employer I may not pay a claim, that it is outside the statute of limitations. Now, it's possible

we could work through that without a statutory change, but it's the only state statute that provides that type of a barrier.

So the issue as we hear people talk about their difficulties and the age of the claims, that's absolutely accurate. It's absolutely an issue for these workers. It has been an issue for decades and decades and decades for workers, but if the DOE employer contractor, as we've discussed, if -- if the physicians panels, if our current medical screening programs, if there is a finding of causation and there is a willing payer when a claim is filed, there are no other states that will prevent that payment.

And indeed at that point the state agency in Iowa under Commissioner Post, if I file a very old claim and my employer from DOE from many years ago agrees to pay that claim, Iris's staff will administer that claim like every other claim Iris's staff administers. They will make sure that once the claim is accepted, once there's been a primary acceptance of liability by the employer, the state agency -- and I know this isn't always workers' perceptions -- at that point the state agency's role is to hold the employer's toes to the fire to make sure the payments are made properly, okay?

Workers get rejection letters based on a contractor saying I did not cause it, and those letters come on letterhead from the state work comp agency. So employees' perceptions can be that the agency denied their claim. That's often, is not always, a reflection of the employer -- contractor employer saying I'm not responsible for the claim and here is the reason why. At that point every state agency in the country, once the employer says I didn't do it, I deny primary liability for Kate's illness, at that point the state agency enforces a law.

So if I'm an employer that says I didn't cause Judy's illness and I say in Iowa I'm invoking the statute of limitations, Iris cannot make me pay outside of that. She will impose the Iowa state statute, okay? So the state agency imposes the law. It's the contractor employer who makes an initial determination of yes, they will or no, they will not accept that claim as compensable from their employment.

The different statutes of limitations, as though it's not contorted enough yet, also toll in very different ways, some of which are infinitely workable, some of which are very difficult. The top one is the Pennsylvania example, from time -- oh, no, it's not. I'm sorry. It's actually from time of last day worked, which I didn't even put on here. That's a very challenging one to get around if the contractor raises it.

Several states have provisions from times of last exposure, some from last injurious exposure because you get into which employer contractor exposed you. Some are from time of diagnosis. And in Nevada you -- you can -- you have from diagnosis, which you would think is a very wide berth -- that's

great. Gosh, we've got whenever I get diagnosed. But for some conditions in Nevada you've got seven days from diagnosis in which to claim. So you best really know your stuff by the time -- when you get that doctor's note saying oh, gosh, you're really sick, you best be thinking of what you're going to do with that doctor's note pretty quickly. The -- that isn't for all conditions in -- in Nevada, but it is from some of them.

Some -- and the ones with which I think we would have the most ease working and for which the contractors may not raise a statute of limitations issue are from knowledge of illness and the relationship to work. So it might be 30 years hence, but if Dr. Markowitz tells me today that thing you did 30 years ago at the Dairy Queen was way more dangerous than you thought, this is the time I'm informed. I didn't need to know at age 13 that I needed to make a claim because that, you know, drat stuff had too much sugar in it.

The bottom line is that -- that for most states for most workers if the contractor accepts the claim as compensable, the state agency will make sure those benefits are delivered. The other statutory barrier that's out there that would be smoothest if we had a statutory fix but does not prevent payment is there are states in which eligible injuries or illnesses are named. And if you're not on the eligible injury or illness list -- Ohio has a list of covered conditions. And ostensibly, if I file a claim for a condition which isn't on the list, that is a legitimate

defense that my employer can raise. We're all -- all -- we're back to jumpstreet again. If my employer says they'll pay it, Ohio will allow it, okay?

So some of the barriers are truly contractor choices. They are -- they are barriers that exist for workers but what they are is statutory provisions that employers can raise as defenses to paying claims. If we're successful in convincing our contractors to accept these legitimate claims in almost every state and almost every condition, these barriers go away, okay? These barriers are real and workers will feel them if contractors say no, I didn't make Kate sick. And here's the statute of limitations. And even if I did, she's way late in filing. Those are legitimate defenses to claims, but if I have a willing contractor these barriers go away, except in Dr. Miller's state where Colorado will protect those employers from themselves and refuse to allow payment.

And that is something -- you know, as this group goes on, there are systems in which we can -- you know, I've been at this job now for 15 months, and if -- if I look at my -- you know, numbers are my life, and I think that yesterday I got news that I'd help 30 more people, and that doubles the number of people I've been able to help in 15 months. Now, it feels like a lot to me and it probably feels like a lot to those 60, and it's taken, you know, all of us and lots of time and lots of time of David's and lots of times for people like Vikki working for her dad's case and lots of time working with individual administrators, but it is

piecemeal, like David said, one at a time trying to -- to cut a path for these workers, keeping in mind that what the role has been. So we haven't been waiting for legislation to pass. We've been working on this as hard as we can since the day Doc Michaels hit the Department.

What we've been working to do is get for these workers who are eligible for state workers' compensation benefits only, get them access to the systems that already exist to which they had prior been denied access, okay? So it's sort of obvious. It's like, well, gosh, let's just get these valid claims paid. That sort of, to the administrator, sounds like what we all did for a living. But it's -- it's -- it's very challenging with some of these illness claims and these other kinds of claims, and as -- as Vikki pointed out, some of these conditions are in states where the administrators aren't altogether familiar with things like berylliosis and some of the other conditions and some of the diagnoses. The medical community may not be.

But we've been plodding along both informally and formally with state agencies and our contractors, and boy, I don't know, I don't usually get called "Pollyanna," but we've had a fair amount of success and an immense amount of cooperation. We have states saying what statute -- how would you like us to change the statute to help you? We have contractors helping us write the letters to slap them into, you know, submission on some of these issues. We -- we're having a lot of help from people trying to work this through the system. There's been, as David pointed out, an immense history of one demeanor regarding these claims and change occurs slowly, but the individuals we've worked with at the state agencies, many of our contractors have -- have -- have been as helpful as can be and we are making progress.

What we need, obviously, is lots more progress in lots more places and general progress, not individual progress. But we are having some success working through this. I -- I think with this group, with the legislation, with some of the things we're looking at, the ability to broaden that hopefully is on our horizon.

The unique system aspects on the next page. There are some -- some unusual quirks that some of you folks may know about, others may not. But I think that the committee will, as you start digging down deeper and as we proceed, these are issues that are going to be right on your plates. And these are just examples of the issues we've run into.

South Carolina, I think I mentioned that. Many workers lived in Georgia. Now, if you look at benefit levels you don't really need a defense attorney or a plaintiff's attorney, either one, to help you out of whether you want to claim in South Carolina or Georgia. Georgia's got much lower benefit levels than South Carolina. A person who lives in Georgia and works at Savannah River has a legal right to claim in Georgia. That could occur because of their medical

relationship. That could occur because they know the administrator. I don't know that that's happened yet, but there are cases like that.

David referred to the University of California being the employer for several of our workers in New Mexico. So again, you have the -- the possibility that someone might need to select between which state program they're going to claim in ultimately.

Washington, which has an exclusive state fund, has a very unique system attribute which could be very productive for us in that basically around the complex DOE is not the employer. We're -- we are the person who -- who employs a contractor who employs the workers. We -- we -- we let contracts and the contractor hires people. In Washington State there's a provision in the state statute. It used to be either secret or quiet, I don't know which. It was way, way, way back. It's been there for many, many, many years, and it gives DOE standing as the employer in the State of Washington. So unlike other places where we might have to say to the contractor, oh, Employer X, we really wish you'd accept this claim, in Washington State we have actual standing to say it's our claim and we take it.

Texas, voluntary subscription. DOE doesn't permit people to be uninsured for workers' compensation as employers. Our contractors have workers' compensation coverage. That hasn't been an issue yet. I don't know what the future holds for anything from the contracts we will let to who these workers are subject to.

Colorado, and I misspoke in here. It's the subsequent injury fund, not the special comp fund. As though the statute of limitations barrier weren't difficult enough for us to get around, for all claims prior to 1993 the state agency, which I just got done describing around the country as the potential friend of the worker filing a claim, becomes the insurance company defending against the claim for all illnesses inspired before '93. For our workers, that will be, oh, all of them. So for claims that are old for an illness that was caused prior to 1993, and for some of these exposures that take many years to manifest it will be shown that my exposure may well have been before '93 if I were ill today, not only does the state agency say the contractor isn't allowed to accept it because of the statute of limitations, the state agency also becomes the defense insurance company saying we're not paying the claim 'cause it's out of our pocket, okay?

So you know, that's a state in which -- there are states in which you may need a legislative fix to accomplish something. There are states in which you just need a nice, warm, fuzzy handshake with somebody. There's a -- there are a myriad of possibilities that can go on. Colorado strikes me as one that will give us a great deal of difficulty under the current statute.

Lastly, the status of the administrator meetings and briefings, so

ya'll, you know, don't think that we've just been sitting about for the last year on this exercise. All the Task 2 states have been routinely briefed during the past year. Some of those people are at this table. Unfortunately, the most recent briefing I did to all the Task 2 states and almost everybody else with a pulse in my field was in October at the IIBC annual convention in Seattle. And I briefed everyone very thoroughly on a bill that didn't pass.

The bill that passed was not like the bill I briefed people on, the biggest difference being the bill that passed for people with beryllium and radiogenic cancers and silicosis is not an exclusive remedy. Everyone who gets an acceptable claim at the Department of Labor's new system is then eligible to take that piece of paper and come to DOE or actually skip DOE and go right to Iris and say you gotta accept my work comp claim 'cause I lost 20 years of wages and ya'll said before you didn't cause it but now the Federal government says yes, you did. So there is no wage replacement provision in the statute as it is passed today, not to be confused with what's being offered this afternoon, not to be confused with what I briefed everybody on three months ago.

So there are many provisions that are very similar to what I briefed people on, but it is not exclusive remedy as it has passed and there is no wage replacement provision. So if I were a person with a condition eligible under the DOL statute who also lost wages due to that condition, I would need to accomplish my claiming process at DOL when such claiming process is set up. If I'm successful, or unsuccessful I guess, I would then make an attempt either through the Advocacy Office or independent of the Advocacy Office to accomplish getting my wages replaced properly through the state workers' compensation system.

So it's a tad bit contorted in case everything else was just simple and fell into place and gelled so well. This is the first really confusing exhibit.

There have been formal meetings with administrators, all of whom have been very, very, very welcome to say how can they help us, what can they do, how can this work. Colorado, Ohio, South Carolina, Nevada, Washington, New Mexico, and Tennessee. Additionally, I've had extensive meeting discussions with the Navajo Nation, Missouri, New York, and Pennsylvania. In all of those arenas we have people working on plotting around toward a path forward.

New Mexico, for instance, has a workers' compensation liaison, Mr. Montoya who is the person to whom people go if they don't know how to navigate the system. That's very helpful.

In Ohio they have set up the agency. The state fund has defined DOE point people, people in the jurisdictions where Fernault is, where Portsmouth is, that -- to whom workers can go. In Ohio those agency folks are

working very closely with the representatives of organized labor who are representatives to our former and current worker medical screening program.

So I mean we're seeing a great deal of progress in how people are, you know, playing well with other children. Some of this is emerging as we go. Some folks were trying to figure out a solution to an unnamed question because the legislation wasn't clear till it passed, and now, you know, may pass yet again.

So there have been briefings on a cursory level with almost everyone in the country, briefing at a very detailed level with everyone on Task 2, i.e. all the places we have facilities, and indeed the beginnings of arrangements, agreements, harvesting information from the administrators and their folks, which will help us an immense amount as we go forward with the MOUs. It's certainly not one-size-fits-all. We need different solutions at different states. And although we're mandated to do that with either the governor or the work comp administrator, whomever it is, it will of course be the people that we're working with because every state looks differently. Sometimes it's the Department of Insurance. Sometimes it's in the Department of Labor in terms of with whom we'll need to actually get the work done.

So we've been making a lot of progress, but it's -- it's very slow. It is truly glacial speed. I think it was Iris that asked what we called, you know, quick in the Federal government. I talk fast, if that helps, so.

But we -- we've been -- we've had a lot of cooperation from the state agencies. They've been very open to asking us what we need to achieve success. The substance of many of our meetings with Dr. Michaels and these chief administrators has been asking them what they think we need to achieve success. It's indeed been the chief administrators of states that have said to us sometimes privately, sometimes publicly here's how to get it done here, you gotta get the statute fixed.

As you know, some of our states have statutory work comp advisory councils which will advance statutory provisions. Some states do not. In the states where workers' compensation is contentious -- that would be all of them -- and there's no advisory council process, there are different factions that are at times hesitant to revisit the workers' compensation statute because once you get a work comp bill on the table we call it a vehicle. And everybody has that -- their agenda on that bill.

Around the country in the last 10 years 35 states have cut benefits to injured workers. It's probably closer to 45 by now. It was 35 six years ago, four years ago at WCRI. So there's -- there's been a movement to decrease benefits to injured workers in the recent decade around the country, and so for

some of the statutes, states in which that hasn't been accomplished or the business community still might think that needs done to drop their costs and prices, there are people who understand that a statutory fix is necessary but may be hesitant to offer that as a solution because of the other risks inherent in doing that.

So I think that the solution to get workers help in these different jurisdictions and facilities is going to be as unique as the state systems are, and how convenient that I just got the time and that's it. But I'd be glad to answer any questions that might have been inspired.

MS. SPIELER: One minute, okay? We have a couple of issues that are on the table, and several members of this committee are not going to be returning this afternoon. Jim Ellenberger has to leave, I know, for Kansas. Andrea's going to be elsewhere this afternoon. Greg, you're going to be elsewhere for part of the afternoon.

MS. KIMPAN: Glenn's got to go, too.

MS. SPIELER: And Glenn's got to go as well. So I'd like first -- Kate, you'll be around this afternoon?

MS. KIMPAN: I will indeed.

MS. SPIELER: Okay. First, I'd like to ask for input from the people who aren't going to be present this afternoon with regard to any particular issues that are of concern to you or any particular questions that you would like to have Kate answer. Jim?

MR. ELLENBERGER: I have a lot of -- lot of questions in my mind about the -- what is expected of the -- of the committee and some of the interagency relationships, what we will be expected -- or -- or perhaps be able to do in terms of providing advice to the physicians panels that are going to be playing an important role in this process. Just as starters. I mean I --

MS. SPIELER: Yeah. Andrea, do you have any particular concerns or suggestions with regard to how we should approach the industrial hygiene questions and any direction that we should be giving to DOE with regard to the collection of exposure data that you could articulate already? I -- I know that's -- that's a little unfair, but I -- I'm concerned because we're going to lose you and we may not reconvene for several months.

And I was -- I caught -- let me just back up one minute. And it seems to me out of today there are three possible sort of types of action we can take. One is that we can give direction today to the Department of Energy with regard to either actions they should take or information that they should be putting together for us.

MS. TAYLOR: Since you asked --

MS. SPIELER: Let me just --

MS. TAYLOR: Okay.

MS. SPIELER: Okay. The second would be that we could give them specific advice today about the direction they should take in a particular area. The third would be that we might want to set up some subcommittees to --

MS. TAYLOR: Right.

MS. SPIELER: -- further investigate particular issues and come back to the next committee meeting with some subcommittee reports and recommendations that we could discuss. For example, it seems unlikely to me that we're going to resolve the issues that we identify with regard to the physician panel functioning today but that it would make a fair amount of sense for us to designate some people from this committee to work with DOE staff on that issue in preparation for our next meeting.

So -- but I wanted to -- since it's already a quarter to 12, I wanted to give you the opportunity to sort of chime in on this before we break for lunch.

MS. TAYLOR: Sure. One of the questions is is there employee exposure information. Where is it? It's --

MR. MICHAELS: Maybe -- you know, putting him on the spot, Joe Fitzgerald knows more about occupational exposures in the DOE complex than probably anyone around.

MR. FITZGERALD: Well, I -- I can make a -- well --

(Pause)

MS. TAYLOR: And you're not -- but you don't have to be.

MR. FITZGERALD: Thank you. That's a real good question. I posed that question just recently to Westinghouse at Savannah River, basically asking them, you know, where do you start? The basic question of what the situation is with records and how you retrieve records, and it's a very good question because they told me -- and Savannah River has a 50-year history, obviously. Half the records, if not more, are in Wilmington. That's where Dupont originated. And they're paper records. I mean you're talking about '50s and '60s.

A good portion of the records are in Atlanta in the same situation; they're paper records where they transferred records. So they have records in two

different locations.

MR. MICHAELS: But the Feds control the Atlanta records and Dupont controls --

MR. FITZGERALD: Right. The records are actually in the possession of the original contractors, so clearly, they understand that when they start researching a worker who worked at the site and who actually worked there during both tenures of the contractors, they're going to have to go to two different locations possibly just to be able to piece together the records. They also indicated that the state and condition of the records from the '50s and '60s, obviously, were going to be fairly suspect, and it was going to be a major challenge to -- to try to go back and actually reconstruct using exposures.

I might also add that the bioassay techniques, which is the internal dose assessment techniques, are particularly suspect when you go back in history. And our experience at Paducah in terms of doing exposure assessment there was we almost had to rely on surrogate data, meaning air sampling information, to try to get a range of potential internal doses and try to use that as a surrogate for what would be missing bioassay information, information that we would have for today's worker but information we would not have gathered by virtue of technology limitations as well as just, frankly, not, you know, having those standards in place back in those -- in that era.

MS. SPIELER: Let me just interrupt for a second. It sounds to me as if this whole issue of both reconstruction of --

MS. TAYLOR: The records.

MS. SPIELER: -- exposures and the possibility of building perhaps into rule-making some kind of presumptions about exposures for those people for whom individual records can't be sort of put together is a substantial issue that is going to be facing this program and may very well be one that we specifically will want to have some people looking at over the next couple months.

MS. TAYLOR: 'Cause then it goes back to the question you just raised about the air sampling. How are specific and where was this done and those kinds of questions. How long, how many --

MR. FITZGERALD: Right.

MS. TAYLOR: -- what areas --

MR. MICHAELS: If I can just clarify what Joe said.

MS. SPIELER: Sure.

MR. MICHAELS: Well, what he said is absolutely true. I mean the access to records and the condition of the records and the adequacy of the records is dismal in some cases. They're probably better for DOE facilities than for almost anyone else in the industrial --

MS. SPIELER: Possibly. Yeah.

MR. MICHAELS: -- you know, United States for the same era.
So --

MS. SPIELER: All right.

MR. FITZGERALD: Or for external radiation exposure. It's -- it's almost like a spectrum of time. The first 30 or 40 years we have only external exposure information in varying qualities and it gets better over time. And then starting in the 7 -- '60s and '70s, we start taking urine samples, start doing primmer and bioassay type of work, so our internal dose information got a little better. And then, you know, fairly recently, of course, we have better information on early in exposures, other exposures. So it's almost like doing archaeology. The further you go back, the information becomes limited to just simply external information plus probably some air sampling information, which as we learned at Paducah, which is the first time we tried to do this, really what you're left with is road-mapping where workers might have worked, what the ranges of exposures they might have received in those locations, and you end up instead of trying to reconstruct individuals as much --

MS. SPIELER: Right.

MR. FITZGERALD: -- you road-map the facility and determine where the likely exposures may have occurred and what ranges were possible given the data that you do have. And that gives you the opportunity to say instead of reconstructing individual exposure, if a worker worked in certain locations over certain periods of time --

(Telephonic interruption)

MR. FITZGERALD: -- that gives you -- that gives you --

(Telephonic interruption)

(Pause)

MS. SPIELER: Did you turn him off?

DR. MUELLER: I tried to do the volume down and dropped it.

MS. SPIELER: You want to turn him back on?

MS. KIMPAN: They'll come back. I don't know what --

MS. SPIELER: He'll come back.

MS. KIMPAN: Sorry, Glenn.

(Laughter)

MR. FITZGERALD: In any case, though, what you end up with as opposed to searching down the individual's records, which I think is going to be a, talking to the contractors, a very tough proposition, what you come up with is a road-map that says if we can place the worker in certain activities in certain time periods, then you get a range of exposures which would be the basis for making -- drawing some judgements. And that -- that's sort of a second level and not as precise but it offers at least an opportunity to look at -- look at it from that standpoint.

MR. BLEA: But also wouldn't you --

MS. SPIELER: Yeah?

MR. BLEA: -- get -- ranges of exposure but how many people have become ill in that time frame?

MR. FITZGERALD: Well, that -- that's something to be seen. I -- I don't know how you would -- and that's something I think NIOSH and HHS would have to examine. But I think what it does, though, is it gets you away from the paradigm of actually being -- all I can picture is these folks in Wilmington leafing through these pieces of paper trying to find a needle in a haystack which is John Doe's records going back 50 years and then try to figure out what it means as -- and then the records themselves are suspect because, frankly, you have missed dose, you have --

MS. SPIELER: Yeah. Let -- let me just -- there's a scope question I have here that I think sort of runs through all of this. The legislation appears to say that all occupational illness or disease is covered by the -- this worker advocacy process for DOE contract workers. And I -- Kate's presentation raises the specter of musculoskeletal repetitive stress illnesses, but also there are issues, for example, of noise exposure -- but you're talking about the availability of exposure data. How broadly are you talking? Are you talking about radiation?

MR. FITZGERALD: Yes.

MS. SPIELER: Or are you talking -- and beryllium? Or are you talking about this entire --

MR. FITZGERALD: No, I --

MS. SPIELER: -- spectrum?

MR. FITZGERALD: -- I think the entire spectrum, as I was pointing out, is just in external exposure. And the records are fairly good. I agree with Dr. Michaels that --

MS. SPIELER: On radiation.

MR. FITZGERALD: -- in the beginning radiation --

MS. SPIELER: But not employees --

MR. FITZGERALD: No, right. Right. And over time the Department's records probably improve commensurate with industry, if not a little better in some of these other areas. But it's almost like this where the additional sources really weren't reflected until probably over the last 20 years. And so what you're stuck with is in the -- the early period, the early 30 years. You just have external exposure information plus perhaps air sampling information. They did do area monitoring for radiation.

MS. TAYLOR: And -- and then the equipment that was used then, it's probably not --

MR. FITZGERALD: Well, state of the art. Right. I mean --

MS. TAYLOR: At that time.

MR. FITZGERALD: -- clearly, what you're going to have to do is take today's knowledge, apply it to what the data gives you back then, and you're essentially reconstructing what would be the likely ranges of exposures based on what you know. And it's --

(Telephonic interruption)

MR. FITZGERALD: -- but whereas we have done reconstructions of individual exposures -- former worker surveys actually going back in that context and trying to establish, well, for the -- for this purpose how would you get a range that would be suitable --

MS. SPIELER: Right.

MR. FITZGERALD: -- for making some judgement is an area that, really, it almost falls in the middle where we haven't actually done a lot of work to say what about a population of workers as opposed to individual reconstructions.

MS. SPIELER: Okay.

MR. FITZGERALD: And that's --

MS. SPIELER: Let me just suggest. We can -- for those of you who are going to be here this afternoon -- Joe, you're going to be here? We can return to this topic. It seems likely to me, again, that we're going to want to continue a sort of out-of-committee, subcommittee discussion about it so that we can continue this discussion at our next committee meeting. Andrea, I assume you would be --

MS. TAYLOR: I would be interested, yes.

MS. SPIELER: -- willing to serve on a subcommittee if we set one up?

MS. TAYLOR: Okay.

MS. SPIELER: Is that fair?

MS. TAYLOR: Yes, right.

MS. SPIELER: Because what I wanted to do right now was get out the issues of concern to the people who won't be with us this afternoon and then we'll -- if there -- and that may be what we get done right now. And then after lunch, return to questions for Kate, other barriers or issues that we haven't discussed, agree on an -- preliminary list of those issues, and come up with some kind of plan of how we're going to deal with that after lunch.

So the other person who's not going to be with us this afternoon is Glenn, and I'd like -- Glenn?

MR. SHOR: Yeah?

MS. SPIELER: Do you have any specific areas of concern that you want to make sure are addressed this afternoon or questions that you need to have answered now?

MR. SHOR: Well, just to say that I can -- you know, I would like to be involved in any subcommittee work that's related to this question of -- of exposure and sort of numbers of people and population as well as the worker

notification aspects. I mean I think there's some experience on -- on the worker notification issues, both through the agencies and also through -- you know, going through, like, a trial lawyer to do this for class action suits and things. That could be talked about in that area.

But -- and I'm -- there's probably -- I could probably be involved for at least an hour this afternoon if I knew, you know, when specific things were coming up.

MS. SPIELER: That might be hard right now.

MR. SHOR: Might be hard, yeah.

MS. TAYLOR: As a piggyback to what Glenn just said, that was another issue, would be a worker notification or employee outreach. How do you get to -- and as well as the other -- I mentioned earlier regarding the -- the state compensation agencies, their educational level and how they distribute. Those -- those are other issues of concern.

MS. SPIELER: And I -- I -- we're going to return to that question of the outreach to various --

MS. TAYLOR: Okay.

MS. SPIELER: -- layers and how we might want to address that as a committee this afternoon.

MS. TAYLOR: Okay.

MS. SPIELER: So for those people who are leaving, is there anything else that hasn't been mentioned that's of particular concern to you that we address this afternoon or that we address in the form of a subcommittee after we adjourn today?

MR. ELLENBERGER: We're -- we're going to cover outreach? That's -- that's a key concern.

MS. SPIELER: Sense of the body here. We have sort of -- there were several people who had questions for Joe that I've suggested we should come back to this afternoon, and I know there's a series of questions for Kate. It's now five to 12. My -- yes?

MR. BURTON: Let me just ask a question.

MS. SPIELER: Sure.

MR. BURTON: More general. I think it relates to the role of this committee. Are we supposed to be providing advice on how they go about establishing causation for beryllium and radiation?

MS. SPIELER: No.

MR. BURTON: Okay. Because that's obviously -- his comments were to a large extent directed towards that, and it seems to me that's the easy thing to do.

MS. SPIELER: Right.

(Laughter)

MS. TAYLOR: Hopefully we can gather a means of getting to some of those other exposures.

MR. BURTON: No, I agree, but I just want to make sure --

MS. SPIELER: Let me just -- yeah. Okay. Before we adjourn I suggested that I would give people outside the committee a moment to ask questions, and I'd like to do that now if there are any questions from the floor before we adjourn for lunch. Don?

MR. ELISBURG: Can I ask a question? Question number one is is Secretary Michaels is going to be with us this afternoon?

MR. MICHAELS: I can return probably after 2:30 or 2:45. I'm going to --

MR. ELISBURG: And the reason for my question, David, is, if I may, is I -- I would like to suggest that as you proceed with this it is very difficult in dealing with this issue and certainly in dealing with the Department of Energy issues of this scope for any committee to get its arms around something that's been going on for so long.

One of the questions that I think needs to be addressed is what is the game plan that the Department of Energy has underway? What kind of operation -- how are they approaching it? What are the places they can see the advisory committee -- advice? Because I don't think -- well, I -- I -- it doesn't -- I'm not sure -- my question is as this committee begins to write a blank sheet of paper or are there a whole series of analyses, written documents, proposals, staffing plans, budget issues, outreach programs, et cetera, et cetera, data collection issues, claims processing issues that are going to have to be done by

this operation, and has anybody got any preliminary stuff that they're asking this committee to respond to? Or are they asking us to start it with your house and start with the foundation? I mean we can do it either way, but -- but there's -- it's an enormous series of tasks, and I just don't know what -- you know, what -- where the Department of Energy is in developing the -- you know, the 37 pieces that have to be done here.

MR. MICHAELS: In some ways we really are building something from scratch. We don't have a personnel infrastructure. We're hiring -- you know, immediate period, our search is closed, and we're done with it. Hire someone to run the office. We don't have a staffing pattern for the office. We're looking for that. You know, we're just really getting off the ground -- in parallel with the Labor Department and the Department of Health and Human Services to make sure that our programs, you know, integrate well. And the only thing which we

have -- information in the executive order, and we really are very open to your advice. I mean this is a -- this is really de novo in many ways.

MS. SPIELER: Other questions? Yeah?

MR. SELIGMAN: What about records of contractors that no longer exist? Investigate those records and would we -- would we trust contractors to investigate and research their own records?

MR. MICHAELS: Theoretically, the contractor -- successive contractors take possession. Obviously, it will be different in different places, but in those facilities where we've had multiple contractors the -- in some cases -- for example, Dupont, some went to Wilmington. But then Westinghouse has the remainder of them. And you know, each situation is different, but theoretically, the -- you know, if -- if records exist we -- you know, we can have access to them.

There will be cases that we know which -- records no longer exist.

MR. SELIGMAN: Do you trust a contractor to research his own records?

MR. MICHAELS: Well, --

MR. SELIGMAN: Suppose there's something there that they didn't necessarily want known?

MR. MICHAELS: Well, that's a question we'll have to deal with. Certainly, we're trying to set this up in a situation where the contractor is not being held liable in any case here. And I think for most of the contractors who we've dealt with, they understand that this is a program to actually assist them as

well. They're not being put on the lines of paper or anything. In fact, it takes some problems off their plate. So we're hoping we'll get some assistance. Obviously, we'll have to watch it very carefully.

MS. SPIELER: Yeah?

MS. RICHARDSON: Yes, dealing with the hotline, I was asked the question if employees have been awarded or are eligible for -- compensation, how does that apply to later receiving Federal compensation under this initiative? If you're approved by the state will they receive less payment --

MR. MICHAELS: That's a great question. First, let me thank Renee and the rest of the hotline staff. We've received over 8000 calls --

(Pause)

MR. MICHAELS: And I can promise you that -- tomorrow.

MS. SPIELER: Yeah. I think that that's right. Yeah.

MR. MICHAELS: The way the current legislation is written is there is no coordination of benefits or subrogation between the \$150,000 lump sum payment eligible through the Department of Labor and the -- any state workers' compensation payments.

Now, in the legislation being proposed, there'll be a coordination of benefits, and hopefully most people will go through the Federal system. But under current legislation, one can apply for both -- both systems.

MS. SPIELER: Okay. We're going to adjourn now for lunch. We will reconvene at -- somewhere between 1:30 and 1:40, after we've managed to walk back, and we will pick up, Kate, with you and questions with regard to state comp programs.

(Whereupon, at 12:02 p.m., on January 11, 20001, the meeting was adjourned, to reconvene at 1:30 p.m., the same day.)

AFTERNOON SESSION

2:08 p.m.

MS. SPIELER: Kate, we kind of cut you off before.

MS. KIMPAN: Which isn't always easy.

MS. SPIELER: That's true. I know that.

(Laughter)

MS. KIMPAN: You didn't have to jump up and adjourn or anything.

(Laughter)

MS. SPIELER: You were finished with your presentation?

MS. KIMPAN: I was.

MS. SPIELER: And we were about to go into questions specifically on state comp programs when I cut it off in order to give the people who aren't going to be here this afternoon some time. So what I'd like to do is say until no later than 1:30 --

MS. KIMPAN: Sure.

MS. SPIELER: -- we continue the discussion of the state comp programs and that you take any questions first from the committee that people have with regard to state comp. And I think Steve was about to when I cut him off. Go ahead.

DR. MARKOWITZ: The NEC report of workers' comp.

MS. KIMPAN: Yes?

DR. MARKOWITZ: It said in '96 and '97 there were a total of about 23, 25 successful occupational disease claims --

MS. KIMPAN: Correct.

DR. MARKOWITZ: -- in the complex. New -- new claims.

MS. KIMPAN: Correct.

DR. MARKOWITZ: One or --

MS. KIMPAN: Those were --

MR. MICHAELS: -- one or two per large facility. Do you have any idea how many -- what the -- claims are submitted in the -- OD claims in particular?

MS. KIMPAN: Let me -- if -- is it -- with the chair's indulgence,

I'm going to sort of repeat that for Glenn who I think can't hear the questions from the audience.

Dr. Markowitz is asking about how many claims are presented annually to DOE and whether the Task 2 reports reflective of those that have been in the stream or if they were new claims. I don't have it in front of me, and I apologize, but I believe the -- the contractor reports that showed the one percent or so of -- of the work comp claims being occupational illness claims were not only new claims, those were current and former years. So that's everything that at that moment in time in a freeze frame those contractors were paying on.

The answer to your question as to how to determine the overall number of, perhaps, claims submitted and denied distinct from claims submitted and accepted, et cetera is the place where we got the information in Task 2 is from our contractors because DOE at the time had standing to do that and said tell us what you're doing 'cause we're paying the tab. Report out on how many you're paying.

The ability to get a hold of a broader base of information is specific to the abilities of the state system to produce the data. For instance, in the State of Ohio I can get information on the number of applications for certain diseases by disease and those applications that were accepted and denied, and they can further parse that out as a state agency by employer. The State of Colorado can do great things in their data shop. The State of Washington can -- can do things in their data shop. They're all triangulating in on the same information, and they're all constrained by their own versions of data privacy.

In Minnesota, if you called me as research director and said I want to know how many lost time claims Ford Motor Company had, I could tell you. In the State of Colorado we may not out an employer. In Minnesota we don't protect employers, we protect employees. So every state system sort of confounds our ability to -- to get a handle on our whole population.

What I found when we looked at the -- the information from our contractors in Colorado ran extensive numbers for me, as did Ohio as did Minnesota. I did some tests in systems that I knew. The bottom line is it comes down to what the administrators around the table wouldn't be surprised at at all, one to two percent of the overall workers' compensation pie is going to be illness claims.

Again, some states properly call backs and repetitive stress injuries illnesses, which further confounds it. So when you say tell me the breathing disorder, the respiratory disorder claims, you start getting it down to -- you get to literally single digit numbers among the employers.

DR. MARKOWITZ: My question was in what proportion of the

overall number of successful claims that are -- are represented by occupational disease. It was really addressing how many occupational disease claims are even submitted and what proportion of those succeed. And the reason I ask is twofold. One is I suspect that very few claims have been submitted at all, which means that the major --

MS. KIMPAN: Correct.

DR. MARKOWITZ: -- obstacle is getting people to -- to submit claims in the first place.

MS. KIMPAN: Absolutely.

DR. MARKOWITZ: That's why that would be useful information. Secondly, in terms of a measure of the -- your office's success over time --

MS. KIMPAN: Yes.

DR. MARKOWITZ: -- you want to increase not only the number of successful claims but the -- the proportion.

MS. KIMPAN: That's correct. Yes. And --

DR. MARKOWITZ: That's why that information would be important.

MS. KIMPAN: The -- even though I apologize for not answering what you asked, my answer also applies that it depends on the state system whether we can get to the submissions. Some states can tell me how many were submitted and denied. And first, backing up, you're absolutely right. What we found anecdotally and what I know as an administrator is out of the thousands of claimants we've talked to around the country, a handful had submitted workers' compensation claims. The reasons for that are described in the appendices of Task 2, and it had every -- it -- it -- it ranged from knowing from prior history of work colleagues that they were outgunned, they weren't going to succeed, to having the medical benefits already taken care of in an insurance form so just not bothering, to not having any idea that what they were grappling with was occupational.

So yes, there were very few of the people -- this is purely anecdotal. There are no statistics in here. Very few of the people that have come forward to us saying that they feel as though they've been made ill by their work, a very small proportion of those people have actually filed a claim for workers' compensation, and then the reasons are, you know, sort of fall into categories.

On balance, if we were able to get a numerator and a denominator

for many systems, most of the claims that are submitted in a system for occupational illnesses -- hearing loss is a big one -- are ultimately not successful in -- in receiving benefits. Not limited to DOE; I mean within the work comp system.

So yeah, that's -- that's one of the real sort of challenging issues is our contractors can say on who they are paying claims. We have no denominator.

DR. MARKOWITZ: But can the contractor give you the number of claims submitted? I understand why the workers' comp system might have a difficult time specifying that for DOE contractors. But what about the major -- the major contractors? Couldn't they tell you? Don't they know the claims?

MS. KIMPAN: They may know the claims. The major contractors ostensibly have access to that information as the employer, but as a worker I don't need to involve my contractor in my submission of a claim. I can submit the claim directly to Iris's shop in Iowa and my contractor is then informed by the state work comp agency there has been a claim filed by Kate Kimpan saying she was made ill by working with you.

So you end up in this kind of a game. The state agency may or may not, depending on their data abilities, be able to answer. The contractor may or may not be able to answer that.

DR. MARKOWITZ: Well, even if the contractor doesn't know it directly, they'll know indirectly because Iris will contact them?

MS. KIMPAN: That's correct. They'll know, but they -- their rap would be they don't keep that in any form that would be giveable back-able to use that, you know, their --

DR. MARKOWITZ: Did they really say that?

(Pause)

MS. KIMPAN: The attempts to get that answer seem in the 1996 and '97 report on balance to not have been productive, and I believe that's what -- it was Marty Mathemel in our shop that had queried the contractors on these many items and there was not a lot of information forthcoming about that.

MS. SPIELER: Well, maybe it needs to -- the way the question is -- information is asked for may -- needs to be done a little differently.

MS. KIMPAN: I think that also if you said from now going

forward in a real-time way we would -- I don't know -- our ability as a committee or DOE's ability as the employer to say we want you to keep a tab on that. I mean, yes, the information, the data are there. Whether or not those data are retained and -- and kept in a form that could come to us is not clear. Again, if you've got the TPA then, the actual employer contractor may not even know. You know, you submit it to the -- to the comp agency, the comp agency contacts the employer --

DR. MARKOWITZ: Right. But can't the contractor require the TPA --

MS. KIMPAN: Absolutely. The contractor can -- require --

MS. SPIELER: Okay. So -- so it seems to me that there's a future data-keeping issue here --

MS. KIMPAN: Absolutely possible.

MS. SPIELER: -- and then a collection of data issue that -- I want to -- we're trying to get questions about state comp programs out on the table now, and several people have additional questions. Linda had her hand up before.

MS. KIMPAN: Absolutely possible. We could -- we could ask for that in -- in a prospective way, and I -- I don't see why that's not possible.

MS. RUDOLPH: I was wondering when you were looking at all of the state laws, you looked at all the questions of admissibility evidence and whether or not -- if there are disputes, which I anticipate there will be no matter how hard we all try to keep that from happening. Will reports from the physician -- from the DHHS-appointed physician panels be admissible or are there problems in state law with what constitutes admissible evidence before the adjudicatory bodies?

MS. KIMPAN: Glenn, Linda's asking about admissible evidence in support of claims in the future given the possibility of disagreement about evidence for those claims.

There are definitely differences system to system in how that's handled. The way that the statute is currently set up, which you just heard the secretary and David referring to, is that the burden will be on DOE to provide certain information to DOE workers. What we've been doing up until now has been to go through the current and former worker medical screening programs and providers and physicians in order to help us establish DOE's opinion if this is a valid claim that you contractors should accept. That's been working in the

piecemeal way. We've been describing -- I think it isn't a general reply that's acceptable and that is absolutely an issue.

One of the things that -- you know, for instance in Ohio they have a right in Ohio if you're my doctor and say I have a particular compensable condition, the Ohio workers' compensation bureau that will direct a second opinion. We've successfully negotiated in Ohio. Their acceptance of the Fernault Medical Panel has a binding medical opinion that does not go to another opinion. So it'll depend state to state. You know, you get into Colorado where the agency, if it's a subsequent injury claim, is going to act like a defense insurance company and I'm not certain how that will work. If -- if everybody can agree, that will be, I suspect, part and parcel of what's in the MOUs in the states it's necessary to put in writing that these physician panels have standing in the state because all the different states have different requirements for -- standing is.

MR. SHOR: Kate?

MS. KIMPAN: Yeah?

MR. SHOR: This -- this sounds like it -- it's a passive process, right? You're waiting for claims to come to you before anything is done about them? There's no -- is there going to be any attempt to sort of establish -- eligible people and then have them -- you know, when a claim comes in it goes against that list to see whether the person is already in the, you know, intelligence of the - of the Department? That's sort of one question.

And the other one was it seems like this question you were discussing would also get back to what you were talking about earlier, which is being -- if the state agency gets a case where nobody disputes it, they're not going to dispute it either?

MS. KIMPAN: They may not. If -- if there's -- I'll answer the second one first, Glenn.

The state agency may not dispute it if the employer accepts it, but if the state agency has a statutory role it may be --

MR. SHOR: -- Colorado --

MS. KIMPAN: Colorado or Ohio. You know, they have a statutory role to -- to provide for a second medical opinion in the event that they're -- you know, they want to. It's -- it's not clear. It's not clear how that'll work in individual states.

And as -- as for passive, the first question, whether or not this is passive or active, up until now it's been responsive. I wouldn't call it passive so

much as responsive. We've been, you know, taking one thing at a time and trying to -- to -- to work it down the pipe. I don't know whether -- one of the things I think this committee's going to grapple with is who is the potential pool of eligible claimants. I don't know that beyond establishing the broad eligibility -- you worked for DOE or DOE-related facility. Everything else in terms of whether I ultimately present with a disease and whether or not I come forward with a claim, I don't know that trying to define the universe and then seeing how many people in the universe come forward would be the -- an efficient way to get to the people in the universe of employees who are ultimately ill and ultimately compensably ill.

MR. SHOR: Yeah.

MS. SPIELER: Why don't we save that issue for discussion about outreach in a little while? Greg?

MR. WAGNER: Within this concept of a potential pool of eligible claimants, how many worked for an employer that was not in the self-insured group? What percentage?

MS. KIMPAN: I have no idea. How many of the whole body of DOE employees worked for a non-self-insured employer? Is that --

MR. WAGNER: Whatever we're calling this potential pool of eligible claimants.

MS. KIMPAN: You know, Greg, that's -- it -- that answer could be determined but it would deal with looking at a population -- you know, when you have consecutive contractors at the same site that have one insurance relationship for this many years, one for the next set of years, and one for the third, you might have the same population --

MR. WAGNER: It would be on a matrix.

MS. KIMPAN: Yeah, yeah.

MR. WAGNER: Order of magnitude --

MS. KIMPAN: But it could be determined.

MR. WAGNER: -- are we talking about, you know, less than one percent, 10 percent --

MS. KIMPAN: We're almost totally self-insured.

MR. WAGNER: -- 20 percent, 50 --

MS. KIMPAN: We've almost been totally self-insured around the complex.

MR. WAGNER: Not --

DR. WELCH: I mean they're very big -- if you look at current right -- but what their plan is now, you're looking at Westinghouse, you know, -- for very big companies, they would be --

MS. KIMPAN: Yes.

DR. WELCH: -- self-insured.

MS. KIMPAN: There's been a great deal of self-insurance or variations that look like self-insurance to a claimant, a million dollar per person deductible. We have a -- we have a -- we have a contractor that has a million dollar per individual deductible, and that's officially a commercial insurance policy. I would say if I were the claimant covered that's self-insured. You know, the first million dollars of my care is determined directly by my employer. So --

MR. WAGNER: The other --

DR. BODEN: And I'm just --

MR. WAGNER: Okay.

DR. BODEN: -- comment. I'm -- I'm not sure that it was -- for example, at the test site historically --

MR. WAGNER: No, Laurie was saying 10 percent in my ear here.

DR. BODEN: Oh, I --

MR. WAGNER: 10 --

MS. KIMPAN: No, he's the one who said --

MR. WAGNER: -- one opinion that said 20 percent, and so I don't know. It sounds like it's --

DR. BODEN: It sounds like it's sort of around the 10 percent range, but it's not -- it's not a trivial --

MS. KIMPAN: No.

MR. WAGNER: Yeah. 10 percent of a large number of eligible is large, and --

MS. KIMPAN: Yes.

MR. WAGNER: -- one of the reasons I'm asking is also trying to understand the implications for rate-setting with the experience of accepting claim gets incorporated into the non-self-insured group.

MS. KIMPAN: On the broad end CCI or on a state-to-state basis or experience mod for the contractors, which category --

MR. WAGNER: This is going to be a barrier to the --

MS. SPIELER: He's talking experience mod for the contractor.

MS. KIMPAN: Yeah, it's certainly something that, you know, needless to say, insurance folks and contractors have raised with us as we go around the country. There, you know, are -- are sort of two different philosophies. You know, the Ohio state fund, for instance, has responsibility throughout history for a number of these claims, and their position is we insured the risk. If we misestimated that risk it's -- it's -- we still insured the risk, bring me -- bring us your claimants.

MS. SPIELER: But that's not the future mod.

MS. KIMPAN: That's correct. But most of these folks aren't probably covered by an insurance arrangement that's a future model.

MR. BURTON: I don't know. The -- the --

MS. SPIELER: If they're insured.

MR. BURTON: -- self-insurers -- the Ohio state fund experience writes a high proportion of its policies.

MS. SPIELER: Right.

MS. KIMPAN: Right.

MS. SPIELER: And certainly, the carrier -- the private carriers for this 10 percent --

MS. KIMPAN: Absolutely. What if it's --

MS. SPIELER: -- and the -- I think it -- in the large part the

question would be, and maybe we need to put it aside as a question, it won't really matter for -- to the extent that the contractor is doing sole business with DOE because it will get reimbursed --

MS. KIMPAN: Right.

MS. SPIELER: -- for the cost. But to the extent it affects their mod factor outside their DOE contracts, then it becomes an issue, and I don't know the answer to that.

MS. KIMPAN: That concern that I'm -- I'm a contractor that does work for DOE and then other work outside, and so I say, oh gosh, you can't do that to me because -- for those who -- pretty much everybody at this table knows we're talking about for experience mod, but if I work at a certain business I'm compared with everybody else who does the same type of business. If I do better in terms of the number of injuries and illnesses I have, I pay less insurance money if I'm buying through a commercial insurer. If I do more poorly and have more injuries, I -- I pay more. That's called experience modification.

To the extent that contractors currently doing work for DOE worry about that being extended into their other work, I don't find that altogether likely. If you look at, like, for instance, Lockheed Martin Energy -- Energy Systems at Oak Ridge, everybody makes a group four aware they're doing that DOE work right there. We don't have fingers that reach back to Lockheed Martin.

MS. SPIELER: Okay. One -- one minute. Don, did you have something to add to that?

MR. ELISBURG: Yeah, yeah. I think you're wrong.

MS. SPIELER: Okay.

MR. ELISBURG: In discussions that I've had involving the Environmental Management Advisory Board and the Safety and Health Committee, we started to talk on the workers' comp issues. And for example, talking to Bechtel.

MS. SPIELER: Yeah.

MR. ELISBURG: That came into the -- it's a major, major DOE contractor. They're also worldwide.

MS. SPIELER: Right.

MR. ELISBURG: And obvious -- and one of the concerns they have is that their DOE experience rating, if they don't get it right, will have a

significant impact on their external mod.

MS. KIMPAN: But are they at the table, Don, at -- I know that many of our other contractors like, you know, the folks out in -- in some other facility that are relationship like Lockheed and -- in Oak Ridge is limited to that --

MR. ELISBURG: No. What we heard flat out from the Bechtel people was that they did not see that they could put a circle around what they did at the DOE -- complex as -- that could insulate them from what would happen to all of their great business they're doing outside --

MS. KIMPAN: Mm-hmm.

MR. ELISBURG: -- complex in the context of the experience --

MS. SPIELER: They're not self-insured?

MR. ELISBURG: They are self-insured but they also buy excess insurance --

DR. WELCH: Sometimes if you've -- been on a very big --

MR. ELISBURG: Yeah.

DR. WELCH: -- the owner looks at the equivalent of experience --

MS. KIMPAN: Oh, absolutely.

(Simultaneous discussions)

MS. SPIELER: That's right.

MR. ELISBURG: The point that was made was -- we were trying to deal with was that -- that the -- what they do inside the DOE complex --

MS. SPIELER: Right.

MR. ELISBURG: -- vis-a-vis the workmen's comp situation has a bearing in their minds --

MS. SPIELER: Right.

MR. ELISBURG: -- on their record outside the DOE complex --

(Simultaneous comments)

MR. WAGNER: But the point of my question was just to get it on a list of potential barriers.

MS. SPIELER: Yes.

(Simultaneous comments)

MR. ELISBURG: I just wanted to make that --

MS. KIMPAN: And there are also --

MS. SPIELER: Wait.

MS. KIMPAN: Oh, I'm sorry.

MS. SPIELER: Okay. Let's -- let's move on right now to --

MS. RUDOLPH: Yeah, my --

MS. SPIELER: -- the next question.

MS. RUDOLPH: Well, this -- I'm -- I'm sort of trying to get a feel of, like, what -- what are the priorities that we really have to deal with. And I'm getting a sense from your presentation that, perhaps with the exception of Colorado, that in most of the states as long as the employer or contractor accepts the claim then the variations in state law really don't matter that much.

MS. KIMPAN: They matter to the recipient of benefits but --

MS. RUDOLPH: In terms of how much benefits but --

MS. KIMPAN: Correct.

MS. RUDOLPH: -- in terms of do they get any -- we're not going to change --

MS. KIMPAN: Correct.

MS. RUDOLPH: -- how much benefits --

MS. KIMPAN: That's right.

MS. RUDOLPH: -- they get in each state. And to me, that kind of suggests that the most important thing to focus on if we have -- are just starting to talk about the -- what is -- how do we keep claims from getting into the state system, into the state adjudicatory systems.

MS. KIMPAN: Right.

MS. RUDOLPH: Because it's only once they get into the state adjudicatory systems that we run into all these different problems with statutes of limitations and so on.

MS. KIMPAN: Yes. That's right.

MS. SPIELER: Okay. So wait: we will come back to this in a minute. Final questions for Kate with regard to state systems first. Les?

DR. BODEN: One of the things that we are -- in our major surveillance project for the union people about the reluctance of some of their members to file claims was the concern that their medical care benefits would fall through the cracks, namely that they would at least be initially, if not eventually finally, denied workers' comp and that their first party payer wouldn't cover their medical costs.

And state law varies on this, but one of the things that we might want to consider is whether there ought to be some provision to make sure that even in claims that are questioned that people not be left high and dry having to pay their own medical costs while somebody's figuring out who will eventually pay. If they do have either private or Medicare coverage if they're not work-related --

MS. KIMPAN: Sort of like a medical pay without prejudice?

DR. BODEN: It's essentially where you've got -- where you've got some -- usually some way of getting paid back if it turns out that it isn't a workers' comp issue from, you know, from the first party payer. Some states have that in law --

MS. KIMPAN: Right.

DR. BODEN: But it'll stop people dead in their tracks if they're thinking that something that their first party payer would cover would all of a sudden not be paid if they file a claim.

MS. KIMPAN: I -- let me toss in one more experience mod thing just sort of in reply to Greg. There -- in addition to contractors' concerns, which I have heard, too. Don's absolutely accurate about their contentions about experience mod. There are a variety of opinions about how that might affect them. There's certainly the opinion among administrators, some of whom I've spoken to, that for those states that have -- that use NCCI as rating and have their contractors in the private insurance market, there will be a generalized effect on that classification that will raise the cost to insure that type of worker.

I think that's an insurance effect that if we have a whole bunch of claimants that heretofore were never paid and we start having an experience where they are paid, I think that that will absolutely affect the ultimate experience of that -- that business in -- within the insurance industry.

I -- I don't know -- you know, John, if anyone could guess how much. I -- I cannot imagine what the magnitude or scope might be, but that's a -- that's a concern we've heard from administrators who are in states where the contractors are privately insured.

MS. SPIELER: Okay. I actually have a couple more questions specifically about how state systems work and how you've been working with them. If other people are --

MS. KIMPAN: Yeah.

MS. SPIELER: Laura, why don't you go first?

DR. WELCH: In some states -- and you -- you listed the barriers, but one barrier is just kind of disease of ordinary life.

MS. KIMPAN: Yeah.

DR. WELCH: Like if someone has COPD --

MS. KIMPAN: Yeah.

DR. WELCH: -- and I as a doctor say their work was a substantial contributing factor, in some states that's just not compensable.

MS. KIMPAN: That's right.

DR. WELCH: COPD is a disease of ordinary life.

MS. KIMPAN: That's right.

DR. WELCH: I don't actually quite understand it 'cause I don't have to deal with it in the District of Columbia, but it seems like that would -- the diseases -- once you get outside of berylliosis, silicosis, asbestosis --

MS. KIMPAN: Yes.

DR. WELCH: -- you're dealing with diseases of ordinary life.

MS. KIMPAN: Absolutely. And you're absolutely right that different states deal with it differently. Some -- some states will accept a claim if

the work made anything about you worse and some will only do it if it's the preponderance of the reason for your ailment. So to the extent that in this part of the system we're trying to get people to a door they couldn't get to before, once they get through the door it's -- it depends what state you're in what will happen to you. Absolutely.

DR. WELCH: But that would be like all the other barriers you --

MS. KIMPAN: Yes.

DR. WELCH: -- employer doesn't contest it on that basis.

MS. KIMPAN: Absolutely true. The employer accepted it because there was a panel -- that this group had informed a medical panel that said we think this is what's going on and we have a willing contractor, willing payer, but for some of the states -- specific barriers, yeah.

But absolutely. I mean I think that Dr. Markowitz and Dr. Boden could talk about some of the experience, and Dr. Welch, with hearing loss around the complex. And different states deal really differently with --

DR. WELCH: -- simplest work-related condition we're dealing with.

MS. KIMPAN: That's right.

MR. BURTON: All right -- disease of life, right?

MS. KIMPAN: That's right. So I mean that's something that a lot of our employees have been -- manufacturing employees in very loud environments and on the screening and the ultimate further testing that our former and current worker screening programs are doing. They're finding hearing loss at a not, I don't suspect, surprisingly high rate but we look at the people that have successfully filed work comp claims for that disease and one, two, three of 'em, you know, there aren't a lot of successful claimants for hearing loss around the complex right now.

DR. WELCH: Or anyplace else.

MS. SPIELER: Let me bring us back again. I'm just -- I -- we really have a limited time and there are things I'd like to accomplish today. Let me ask you what thought has been given at DOE with regard to written memorandum of understanding in states? Do you have an outline in your head of the issues that you would be covering in these memoranda? Have you broached the topic of written memorandum with states in which you -- you say you've reached agreements and so on? Where does that stand?

MS. KIMPAN: Okay. Yes, there's been some thought. It was assigned to somebody in our general counsel zone, and people started looking at sort of generic forms, one-size-fits-all, of memoranda of understanding.

During the time that that was already going on, because we were going forward on that before the statute ultimately passed -- the statute passed and said what should be done, and a fresh look was taken. In the meetings that we have had -- the -- the meetings I've conducted thus far were all in advance of the legislation passing, so I was going for less formal agreements of paths forward. So there are no MOUs established yet with states because there was no program in statute until late October.

There is currently a form. There have been people working on it at DOE. It has not yet gone out of our shop to any individual state. And yes, it is not one-size-fits-all. What --

MS. SPIELER: Do you have a list of issues that you think memoranda should cover?

(Pause)

MS. SPIELER: I -- I was assuming it wasn't one-size-fits-all. It always makes me nervous when something goes to the -- the counsel's office.

DR. BODEN: This sounds like potentially an issue that could benefit from a possible subcommittee --

MS. KIMPAN: Yeah.

DR. BODEN: -- this group, working together with you, particularly since we have people from state workers' comp systems here --

MS. SPIELER: Yeah.

DR. BODEN: -- who might have some valuable input into how --

MS. KIMPAN: And when you --

DR. BODEN: Period.

MS. SPIELER: Okay --

MS. KIMPAN: In the meetings that I've conducted with administrators, that was the question we led with. What would -- what would be helpful in writing from us before we were mandated to do so, so we've been gathering information from administrators saying what would we need to do to

accomplish it in your zone and, you know, getting it put back to try and make them the most productive, but it hasn't gone to the next step.

MS. SPIELER: Okay. Okay. I have a couple of very specific questions about state comp programs.

MS. KIMPAN: Okay.

MS. SPIELER: I don't know if you'll know the answer. You were asked -- I'm still -- here. In the states that you've looked at, where do they treat repetitive stress kinds of musculoskeletal illnesses as illnesses and where do they treat them as injuries? Do you know?

MS. KIMPAN: Treat them as -- I was really talking about categorization distinct from treatment of.

MS. SPIELER: No, I'm -- I'm not talking about medical treatment. I'm talking about administering treatment. They -- do they -- in the states that you've looked at, are they categorizing backs as injuries usually? I mean backs are going into those systems. Are they going in as injuries?

MS. KIMPAN: In many systems the administrators would probably refer to them as injuries when we do an injury distribution. If you look at -- if you start talking to the BLS, if you're --

MS. SPIELER: No, I understand that. I'm asking which states talk about these injuries in the states --

DR. BODEN: Treat them under their law under the "injury" or "illness" part of the --

MS. SPIELER: What John nicely calls the fiction of back injuries.

(Laughter)

MS. SPIELER: Do you know --

MS. KIMPAN: I don't.

MS. SPIELER: -- among these states who -- you know, who's treating carpal tunnel as an injury and who's treating it as an illness?

DR. WELCH: That's different from back 'cause back --

MS. SPIELER: Yeah.

DR. WELCH: -- you know, people come forward and say, I bent over.

MS. SPIELER: Right. No, they -- they -- acute event.

DR. WELCH: No, it was actually -- and if you say that it's classified as an injury.

MS. KIMPAN: It was actually data treatment specifically I was talking about, Emily. Only the treatment of I make a query about injuries or illnesses, I might get very different numbers from a state system.

MS. SPIELER: No, I understand that. I was --

MS. KIMPAN: There's no --

MS. SPIELER: -- specifically trying to figure out the scope of what this program is going to end up encompassing, and in order to do that I think knowing how some of these borderline conditions are treated by these particular states would be useful. Don't?

MR. ELISBURG: I was going to say at some point -- here in terms of what activity at the sites can this program best assist workers in helping themselves with what I call routine injuries that are happening and going to go through the comp system anyway. Is that what you want to spend your time on or do you want to deal with the fundamental problem that causes the legislation to be passed which -- the occupational -- of the past where people can't get -- could not get into the system. And there's a whole bunch of people out there who need to get into that system.

MS. SPIELER: No, I -- I understand that. I think, though, that the scope of the legislation right now suggest that we cover all --

MR. ELISBURG: I understand that but there's a reality check here in terms of the capacity of both the worker advocacy office, whatever it is, as well as the advisory committee to be able to deal with what -- what is it you can get done here as opposed to trying to deal with occupational illness --

MS. SPIELER: Yes.

MS. KIMPAN: I don't see that distinction as a barrier to us getting somebody help. I see it as something as there are states and, you know, off line probably these folks could tell you the states are more likely to go back -- claim accepted in. So I mean there are different state personalities and how rigorously a state will accept a defense by somebody saying I didn't cause that 'cause there's no acute injury. But I don't see it as a state system attribute that is different among

the states for DOE workers.

MS. SPIELER: Okay. What -- yes?

MR. ELISBURG: -- was if you're dealing with beryllium or radiation cancers or something that's going to go into the system that's unique to the complex, which is a problem with people filing claims, it's one way to have the state system handle those. If you begin to get into something like repetitive stress where the entire industry -- industrial base of that state is going to be affected by what you do, you may have an entirely different reaction going on --

MS. SPIELER: Yeah.

MS. KIMPAN: And you can -- and you can look by the numbers of compensable claims. You know, Minnesota pays many more back claims than some of its neighboring states, and -- you know, like Wisconsin. And there's nothing really to suggest that there's something different about the demographics, the work force, or the work that's done.

MS. SPIELER: Right. It's a system.

MS. KIMPAN: Yeah. It's about --

MS. SPIELER: Let me ask you one other very specific question. Are -- do any states -- and I -- I just don't know. Other people on the committee may know the answer to this. Do any states that we might be dealing with ever provide surveillance type medical benefits for -- based on exposure information where there isn't yet a diagnosis?

MS. RUDOLPH: As part of the workers' comp program?

MS. SPIELER: As part of the workers' comp system.

MS. RUDOLPH: Not California.

MS. SPIELER: Does anyone do that?

PARTICIPANT: I don't think so.

MS. KIMPAN: Not that I'm aware of. Is anybody else aware of a state that does?

MS. SPIELER: Okay. Other questions? Yes?

DR. MARKOWITZ: Let me ask a question. The former worker medical screening programs --

MS. KIMPAN: Yes.

DR. MARKOWITZ: -- have occupational medicine expertise screening former workers around the complex and therefore coming up with occupational diagnoses. In your -- and I know you've been working on that. Is it likely that you'll be able to come to agreement with the contractors or whomever, the state comp systems, in a way that they won't have to go through the panel of physicians?

MS. KIMPAN: If they're --

MR. SHOR: Can you repeat the question?

MS. KIMPAN: Yeah. Dr. Markowitz is asking if the former or current worker medical screening programs which have yielded a diagnosis might be claimants who could avoid further medical panel purview via the medical panels that are going to be set up ultimately, and the answer is that's certainly what we've been working on. Without the statute there were no medical panels to be established, so the specific meetings that we've had with states, like the one in Ohio that was -- was successful and some in Tennessee have been successful, have been to say we have these medical panels that are not ours, they're not yours, they're beyond refute, they're the best science in the country. We want you to accept those, dear contractor, without asking for second opinions of yours or mine or ours, and we've been successful on a case-by-case basis.

What we were trying to generalize, not knowing whether we'd ultimately get a statute or not, was that claimants coming out of those programs with a diagnosis are among what we consider valid claims. And indeed, the secretary has written a very powerful memorandum to our contractors saying that, that in a description of what he asked for in April, to not defend valid claims, we have defined "valid" as including claimants coming out of these programs. So that is an absolute goal we've been working toward.

Again, that was begun without regard to whether we knew we'd get a statute and now there's a statute. But that's exactly what we were trying to work out, was the workers who were through there were considered having had their diagnoses done and that therefore could get into compensation systems without further medical review, without further record review, without further medical testing. So that --

DR. BODEN: Follow up on just -- so once these medical panels are established, is that -- is it the current intention to continue with that process? I mean I think that's sort of where Steve was headed. That is, will it at that point be necessary for everybody who's already been examined by one of the worker surveillance projects to be -- to have their documentation reexamined --

MS. KIMPAN: As you --

DR. BODEN: -- by the panel?

MS. KIMPAN: There are different depths of work being done, depending on the different programs examining these workers. To the extent that some are screenings and some are full diagnoses, including disability diagnoses, obviously if they were just a screening saying, oh gosh, this person has some chronic obstructive pulmonary disease distinct from -- this person has this level of a disease with this permanent impairment. I think that if we had a mere screening that many state systems would require additional information. I think for some of the folks they're coming out with some very solid medical data.

What we've been trying to work out, and it may be well under the category of MOUs, is just plain accepting those diagnoses as they are when they're coming fully blown as diagnoses.

MS. SPIELER: Just a point of some clarification, again coming back to a point that Linda made. I think that there's a difference between an MOU with a state agency --

MS. KIMPAN: Yes.

MS. SPIELER: -- and the acceptance of claims by the contractor --

MS. KIMPAN: Absolutely.

MS. SPIELER: -- covered by the MOU. And we need to be very clear about that distinction. The MOUs would presumably deal with any agency functioning but they wouldn't address any contractor resistance and whether the contractors going to accept --

MS. KIMPAN: Absolutely.

MS. SPIELER: -- surveillance position reports. And as we come back to the issues, I think we need to be -- keep some clarity on the division between those two --

MS. KIMPAN: That's a very good point because the MOU might help a state agency navigate what we think we're going to do, but if the contractor raises a legal defense, it's out of the purview of what --

MS. SPIELER: Right. And if the contractor doesn't, it may be out of the purview --

MS. KIMPAN: That's right. Absolutely. They're almost silos.

They're almost independent silos.

MS. SPIELER: John?

MR. BURTON: I have a question about the states that are included in the Task 2 Report.

MS. SPIELER: Yes.

MR. BURTON: I looked at that and drew some consolation from the fact that it wasn't a really long list; it was only 14 states.

MS. SPIELER: It just got longer.

MR. BURTON: And it didn't include New Jersey, which was even more beneficial, I think.

(Laughter)

MR. BURTON: Then when we had the press release it was just -- Andrea pointed out that the town she was from in Alabama, Georgia was on there, which prompted me to look at New Jersey, and there were --

MS. SPIELER: Lots of--

MR. BURTON: -- at least a dozen. And then I looked at New York and I saw some New York states.

Now, I haven't had enough time, obviously, to do this thing but the question -- I think it's a question to define the magnitude of our project here because if we're dealing with 14 states working out individual grievance is one thing. If we're talking about 44 states, then I -- then it's a much more complicated process.

MS. KIMPAN: Absolutely.

MR. BURTON: -- whether -- is the task force -- or the scope of this committee? What are we talking about in terms of states that have significant facilities that --

MS. KIMPAN: I think that, like David referred to in the press conference, I think there are 47 unique jurisdictions on there, the Marshall Islands, Puerto Rico, and D.C. among them. There are six missing states, seven missing states. The Dakotas, you know, are missing. Arizona's missing. Hawaii's missing. But we've pretty much got everywhere else.

I think to the extent that there were probably fewer workers exposed and therefore fewer claimants from the states that had a little activity a long time ago, I -- I think it -- it sort of naturally falls out. The 14 states in which we're still doing business and did a whole lot of business -- Iowa had an assembly plant that's no longer there, but the -- the states that have the majority of the DOE workers throughout time I think are the primary ones that we've -- that were identified in Task 2.

But absolutely. I mean there's the upriver reactor in Minnesota. I mean there are going to be questions asked of every system. I don't think that the MOUs and the outreach that needs done can be limited to where our major facilities are.

MS. SPIELER: Les?

DR. BODEN: The two issues -- one, the large group of states and two, the potentially large universe of conditions does lead me to, I think, agree with the implication of John and -- and the direct statement of Don that it might be a good idea for us initially to have an agreement about at least what we're going to tackle first, not necessarily forever putting aside other things, but at least for the moment trying to focus on an initial set of states that really has the large -- the vast majority of people who are involved.

And as -- may be a set of conditions that we can agree on, and maybe that's -- and I think noise-induced hearing loss is a interesting question that might be discussed although, you know, the ones that are definitely on the whole list, obviously, are on it. So that might be something for us to try to do is to --

MS. SPIELER: Yeah, to put --

DR. BODEN: -- focus a little bit.

MS. SPIELER: -- if we can set some priorities today that we feel not only this committee but the DOE should focus on, we can do that in the form of a formal resolution so that it would be clear where the direction would be in this -- in the coming initial period. And I think that might be an important outcome of today's meeting.

Linda, you had -- I think you had your hand up? Did you -- or are you --

MS. RUDOLPH: I did. I'm -- I'm not quite sure where we're at on the agenda. I mean --

MS. SPIELER: Yeah. I'm actually about to move us on the agenda.

MS. RUDOLPH: Okay. I'll hold my thought.

MS. SPIELER: Okay. Thank you, Kate.

Organizational Issues

MS. SPIELER: I've been -- I had suggested that after Kate's presentation today that we kind of summarize what we see as the obstacles. I would say perhaps the obstacles to implementation, but more importantly, the obstacles to -- that we have identified in terms of the ability of people to receive compensation who worked at these facilities for occupational illnesses. And then I would suggest that we try to group those and decide what -- exactly what we're going to do with them today, whether we want to set up a subcommittee that will deal with it, whether we want -- whether there's actually a resolution that should come out of today's meeting, and whether or not there's specific information that we want DOE to put together for us either for the subcommittee or for our next committee meeting.

And I've been keeping a list of the -- so I'm -- I'm not sure it's all inclusive, but -- 'cause I've actually been trying to do some grouping here, but here -- here are the -- the major barriers that I've been hearing sort of come up in a variety of different ways. And what I'd like to do is, using this as a starting point for the discussion, kind of refine.

First of all, the whole question of non-submission of claims, lack of information for the affected workers, and their inability to navigate the system as a result.

Second, contractor resistance to payment of claims. That comes either through their insurance arrangements, the particular behaviors of their TPAs, through their own concerns about the effect of acquiescence on claims to -- for other facilities or for future bidding, but that universe of resistance by contractors to the acceptance of claims.

Third, barriers to contested claims that lie within the state agencies. Statutes that went -- there's a set of legal barriers that arise in contested claims, statutes of limitation, evidentiary -- exclusions, definitions of acceptable occupational diseases versus diseases of life, natures of causation standards, and -- preexisting condition exclusions.

In addition to that, there are the cultural behaviors of state agencies, which all -- I put in the -- sort of under the same rubric, which is that when they get OD claims they tend to scrutinize them highly or their -- the people who do the claims -- initial claims reviews are not particularly well educated with regard to OD claims and so on.

Let's see. One, two, three. Causation standards in general and how sort of a medical panel would deal with what kinds of information they would need in order to make a kind of determination with regard to causation.

DR. BODEN: That would be sort of medical and --

MS. SPIELER: Medical and exposure. Now, that has -- that has several different components. It has the component of what do these medical panels look like. It has the component of the putting together of the exposure data and how that's going to be done and to the extent the data's unavailable how it's going to be either reconstructed or presumptions are going to be developed with regard to what happens to a worker who doesn't have the data but may very well have worked in the hazard.

And I -- I had as a separate sort of issue on my list, and I don't know if it's a separate issue, the issue of availability of data, availability of data from state systems, availability of data -- it's come up in a variety of different ways. It can be put under these other topics, but I think it -- it's sort of a problem if we don't know -- you know, contractors can't give us information about what claims have been submitted in addition to claims -- you know, information about what the exposures were. But I'm not -- I'm not sure whether the data piece is a separate piece or is a component of the others.

So that's -- that's what I've got on my list as of now. Changes, amendments, additions?

DR. BODEN: I think that's a great list. There's --

(Laughter)

DR. BODEN: I do. There's something I don't know if it quite fits or not, but I think it's sort of a potential practical problem, and that's a sort of historical one of people where -- what happens when claims were submitted, denied, and lost? You know, where people -- people submitted a hearing loss claim last year, it was denied. Let's say it even went to adjudication and the worker lost. Where did those claims fit?

DR. WELCH: Can you reopen that claim?

DR. BODEN: Can you -- right. It's sort of the reopening -- or -- or it was denied and the worker just dropped it? They said, oh, I don't know. You know, or they couldn't find a lawyer to represent them. You know, any of these other things. So it's a sort of --

MR. WAGNER: It would probably fit in the first category.

DR. BODEN: Sort of --

MS. SPIELER: I actually think it fits in the barriers of the state agency category because the problem really is that if there's a new claim filed --

MS. KIMPAN: Again, if there's a willing payer --

MS. SPIELER: If there's a willing payer it may not matter. It's a defense to say --

MR. WAGNER: But --

(Simultaneous comments)

MR. WAGNER: But it sort of fits in both because if I've been denied then I may not be paying attention anymore to people -- or to -- so I think there's --

DR. BODEN: So it's also a non-submission issue --

MR. WAGNER: Exactly.

DR. BODEN: -- because -- right. Because I filed, I was denied, so I have no idea that --

MR. WAGNER: Yeah, yeah. I figure I'm out of luck.

DR. BODEN: -- recourse right now. That's good.

(Pause)

MS. SPIELER: Other issues? Yes, Steve?

DR. MARKOWITZ: I think a lot of people don't submit claims because there's not a doctor around who told them they have an occupational disease. And I don't think that quite fits with the number four.

MS. SPIELER: Yeah. You're right.

DR. BODEN: But it's sort of number one.

MS. SPIELER: But it isn't because the question would be more how do you find physicians who would be helpful on claims in local areas and what --

MS. RUDOLPH: It's what do you -- the whole worker notification

issue of not just how do you identify who you're going to send the notice to but what's the content? What kind of resources do you offer to them when you do the notification so that they can do a follow-up that's appropriate and effective?

MR. WAGNER: It's a general issue of non-filing is -- or underfiling.

MS. SPIELER: Yeah.

MR. WAGNER: It's what you raised in the first category.

DR. BODEN: Right. Or you know, I -- I've notified -- I go to the doctor on the corner --

MR. WAGNER: My doctors says I don't have a problem.

DR. BODEN: -- what to look for, doesn't take a good occupational history.

DR. MARKOWITZ: But worker notification and outreach to the workers is not going to address that problem.

DR. BODEN: That's right.

DR. MARKOWITZ: That's why I'm afraid to --

MR. WAGNER: Well, no, you -- there's going to need to be --

MS. SPIELER: Yeah, but I -- I called it non-submission of claims, not worker notification, as the first --

DR. MARKOWITZ: But worker notification may be part of the solution, but there may need to be other components to -- to addressing the issue -

MS. SPIELER: Mm-hmm.

DR. MARKOWITZ: -- which is under filing or non-filing.

MS. SPIELER: Okay. Yeah. Well, actually, what I was going to suggest is that we come back to each of these and discuss them. So first, --

MS. RUDOLPH: Right. So --

MS. SPIELER: -- are there additional barriers that you think aren't covered by these four or possibly five categories?

(Pause)

MS. RUDOLPH: Emily, I -- I agree with your list, and I just had a different way of --

MR. SHOR: Kate?

MS. KIMPAN: Yes, Glenn?

MS. SPIELER: A different way of --

MR. SHOR: I'm going to have to --

MS. SPIELER: Ah.

MR. SHOR: -- go out now, but I might be able to come back in a little later. I'm not sure about that.

MS. KIMPAN: Give us a call if you can.

MR. SHOR: Okay. And I'll talk to somebody later on.

MS. KIMPAN: Bye-bye.

MR. SHOR: Thank you. Bye.

MS. POST: Can I give one?

MS. SPIELER: Yeah.

MS. POST: I would say a barrier is the question of new administration.

MS. SPIELER: You mean the politics --

MS. POST: How -- exactly.

MS. SPIELER: -- nationally and in the -- in the states?

MS. POST: I'm thinking more of the national level, but how -- how is this going to work under a new administration?

MS. SPIELER: Okay.

MR. BURTON: I'd almost put that in with the second category 'cause I think there's -- the broader issue is what kind of resistance you're going to

get not just from contractors but from doctors, from -- there's a whole range of people. Insurance companies.

DR. BODEN: Solicitors within the Department of Energy, potentially.

(Pause)

MS. RUDOLPH: I kind of categorized this in my own mind as I was listening to -- who were the constituencies that DOE is going to have to interact with to make this work? And what does each of those constituencies need either in the way of needs to help them or in the way of needs to boost them along, which would address each of the barriers but, you know, obviously, work -- the workers -- the claim -- the -- the contractors and claims administrators, I think, are really the key --

MS. SPIELER: Mm-hmm.

MS. RUDOLPH: -- because all these other state problems are not - not going to come into play as long as those two do their piece right.

MS. SPIELER: Mm-hmm. Laurie?

DR. WELCH: Yeah, that's what I -- I was only thinking -- first, I thought, oh, the new administration, you know, this is a law. But if it's Department of Energy directing its contractors to do something is a crucial piece, I think that's essential.

MS. SPIELER: Mm-hmm. And I -- I, quite frankly, think that one of the roles of this committee is to try to ensure that that transition is made in a way that maintains its commitment to the implementation of law. Don?

MR. ELISBURG: In your list I wrote it down -- the medical pieces you made. Do you have something in there about the need for a -- a general what I'll call protocol for claims development?

MS. SPIELER: I don't -- this wasn't a need -- a needs list. This was a barriers list. But I -- clearly, I think that in thinking about how do you address this that there's a -- there's a claims process piece that affects DOL, HHS, and DOE that we need to figure out how this committee can interact with and assist in the development.

MR. ELISBURG: I was really thinking about it in the context of what you just said plus that's where you get into a certain amount of interaction with the contractors, even with the state agencies, because as you talk about how you -- how you go about helping the a claimant put together a claim, you begin to

deal with issues -- the exposure, whatever, that -- that has to be dealt with.

(Pause)

MS. SPIELER: Okay.

DR. WELCH: I like your list. I think it -- you know, if we took each topic we could add, you know, items underneath it 'cause -- but I think anything everybody --

MS. SPIELER: Okay. So -- so we -- I think at least in terms of our conversation here today we -- we're kind of -- we've summed up what our understanding is of the obstacles for the implementation of the law. And I think the question that's before us at this point is what's the best way for this committee to assist DOE in the overcoming of these obstacles. And the question, I guess, would be -- I would frame it this way, again, with the committee's assistance.

First, are there priorities that we can articulate today for DOE as an advisory committee that would assist in -- in sort of guiding the work of the staff who are going to bridge this political change but also for the incoming staff who have not yet been identified? And second, how do we want to define the work of subcommittees and how do we want to form them so that we can work on an ongoing basis between today and our next meeting on very specific issues that address some of these barriers?

And we talked about subcommittees in a number of different areas, and I -- I guess I'm looking for guidance from the committee about the best way to proceed on this now. I mean we had several specific topics that were on our original agenda: how the Office of Advocacy should be organized; the relationship between DOE, DOL, and HHS; position panel questions, which seems like a kind of definable piece that needs to be dealt with fairly rapidly since HHS is under a -- under the gun to name panels and DOE hasn't told them what they want yet, so.

MS. RUDOLPH: Can I ask another DOE question, though? Is DOE developing sort of the exposure-slash-medical criteria that will be imparted to these physician panels for use in their evaluations of individuals? Or is that something that we should be recommending?

MR. WAGNER: Paul?

(Laughter)

MR. SELIGMAN: You want the simple answer?

MR. WAGNER: No.

(Simultaneous comments)

MR. WAGNER: It would not --

MS. SPIELER: Wait, wait. No --

(Simultaneous comments)

MR. WAGNER: -- two questions. Is DOE doing this, and is this something that this committee should be paying attention to?

MS. RUDOLPH: Paul, you have --

MR. SELIGMAN: No, and then yes.

(Laughter)

(Simultaneous comments)

MR. SELIGMAN: No -- no, they aren't, and yes, we should.

DR. BODEN: And is DOE that -- is DOE the body that's responsible for developing those things? Not HHS or --

MS. SPIELER: It's not in the legislation --

DR. MARKOWITZ: It's not set out in the legislation.

MS. SPIELER: -- specifically telling anybody to do it as far -- I kept looking for it when I reread it.

DR. BODEN: Okay.

DR. MARKOWITZ: Is there a radiation --

MS. SPIELER: Right.

DR. MARKOWITZ: -- cancer, beryllium, and silicosis? It's absent on everything else. Is the -- just sitting on panels, physician panels, period? No process for --

MS. RUDOLPH: But -- but --

DR. MARKOWITZ: -- developing criteria --

MS. RUDOLPH: But the criteria are there which are -- are or

theoretically should be transferable into application for benefits other than the lump sum.

MS. SPIELER: No.

MS. RUDOLPH: For the radiation --

MS. SPIELER: No, there's a committee charged with developing them specifically on those three -- in those three areas for --

MS. RUDOLPH: For the lump sum settlement?

MS. SPIELER: For the lump sum and what will be wage loss --

MS. RUDOLPH: And then -- and then whoever makes recommendations for other things could theoretically also make a recommendation that those same criteria be applicable for this other product benefits?

MS. SPIELER: Well, I don't know that the same criteria are useful for the other --

MS. RUDOLPH: I'm -- that's --

DR. MUELLER: Yeah. It seems like that we -- we're not going to address those specifically because we don't know what all -- or we don't necessarily know what all the possible toxic illnesses are, et cetera, that -- that hopefully it'd be within our purview to use the information that we will get regarding these state problems and some of these other things, put that into a methodology for the physician panelists so that they have some idea -- here's what -- here are the things that you would be expected to look at and here's how you would be expected to address them.

I mean that's what I would hope would happen so that you could give those panelists some kind of direction, some kind of help about, you know, here -- you would expect to be way -- way up a distance and give comments in a certain way so that that information then that goes to the state, if it has to, or it goes to some other place is going to be useful to the rest of the parties.

So I would hope that we'd be able to do that. So it's sort of giving a blueprint of -- of how things should come out. And some of that will be our interaction information we give to the states and the carriers. Also, I think a little bit of that will go into there to help them make a report that's useful to those other parties.

DR. BODEN: So there's a difference. We're not talking

necessarily about a presumption here but simply saying these panels are supposed to be experts, they're supposed to be able to tell if somebody has noise-induced hearing loss or whatever it is, but they might need guidance about the general -- I mean that's one way of going.

The other way of going is saying use, you know, --

MR. WAGNER: Denies --

DR. BODEN: Right. Yeah.

DR. MUELLER: Well, you can do that for certain things. But these panels are going to address larger -- we don't know everything they're going to address is my assumption. So for certain things you can say, well, we'd like you to use these criteria, but there won't be criteria for everything. So helping them figure out how to report it.

DR. BODEN: Right. Having a standard process and a standard set of forms --

DR. MUELLER: Right.

DR. BODEN: -- that they can use.

MS. SPIELER: There are actually a number of questions about these physician panels that are unresolved when I talked to David over the last couple days. How many should there be? Should they be only in one place? I mean should they meet in Washington and look at paper or they -- or are there going to be regional or local panels? Exactly what standards should happen? If there are three physicians on a panel and there's a split vote on something, what -- what are the consequences of that? And John raised earlier the question of, well, what if somebody's unhappy with the decision of the panel? Is there some mechanism for review of the -- the panel's decision or does it just go without the support of the panel into the state system?

And none -- all of those questions and probably a number of others that we can come up with have been -- are completely unresolved at this point, and there are time limits, I believe, in the bill for HHS to name these positions. And you need, I assume, direction from DOE on what it is they want. Is that fair, Larry?

(Pause)

MS. POST: Let me ask a question. Is -- assuming that your -- that disease classification is not beryllium or radiation or silicosis, okay, and it's the other, the big, huge group of other stuff. If the physician's panel says yeah, it's not

one of those classes but it is work-related to this exposure, in -- aren't that -- isn't that the whole key, then? And don't the contractors then say, okay, I bought the farm and then it just goes and it's paid, right? Any --

MS. SPIELER: Well, that's the -- that --

MS. POST: That's the presumption, correct?

MS. SPIELER: That's the presumption. There are some, I think, resistance to that, but yes, that's the hope.

MS. POST: That's the point.

MS. SPIELER: Yeah.

MS. POST: So it's very important. I think, as Linda said, the whole key is to not get these claims denied at that level so then they don't start failing out.

MS. SPIELER: Right. Right.

MR. BURTON: This kind of takes us back into that issue that we talked a little bit about before, and that is what -- we mean by an occupation disease? 'Cause if we -- if we're going to start off by saying ordinary diseases of life are potentially occupational diseases that we can show a causation, we've really opened up an enormous scope for compensation or back cases in general. And I think -- and I don't know whether this is a separate committee or whether it's the company as a whole that's got to decide that. I'm not sure this afternoon I know how to narrow this thing. I do -- you know, 'cause this is a very tricky issues.

Most workers' comp -- most state workers' compensation programs do not compensate ordinary diseases of life, period, unless there's something -- something unusual about those exposures or peculiar to or characteristic of the --

(Laughter)

MS. SPIELER: Well, most of 'em don't compensate hearing loss, actually.

(Simultaneous comments)

MR. BURTON: Take something like pneumonia. Typical workers' compensation statute doesn't necessarily compensate pneumonia even though when you can clearly show it's caused by exposure in the work place. The typical statute says that pneumonia has to be peculiar to and characteristic of the

worker's occupation.

MS. SPIELER: Right.

MR. BURTON: Now, do we really mean that's what we mean by occupational --

DR. WELCH: Well, pneumonia's -- pneumonia's kind of a bad -- I think a bad example 'cause COPD is like -- I mean Steve and I could probably tell you what we're seeing on the workers --

DR. BODEN: Okay. Chronic obstructive pulmonary -- I'm going to -- going to --

MS. SPIELER: Chronic obstructive pulmonary disease is very common, both from work place exposure and not from work place exposure. And there's been a huge --

DR. WELCH: You usually have both at the same time.

MS. SPIELER: So -- but let me -- let me just -- I think we need a game plan here before we continue the general conversation.

MS. RUDOLPH: Can I just -- can I ask a question, though? I just want to know from DOE what the scope of illness was that was really contemplated as this legislation was constructed and whether you were -- you were thinking as the process went along that this was going to encompass back pain and so on or whether you were thinking in a more narrow way of the classic occupational illness.

MR. SELIGMAN: I believe the legislation is specific to diseases related to toxic exposures.

MS. SPIELER: The legislation is not specific. It -- it says occupational illnesses.

DR. WELCH: The executive order says chronic substances.

MS. SPIELER: What?

DR. WELCH: Executive order says --

MS. SPIELER: Right. Executive order but --

DR. WELCH: I began working at a DOE facility and do toxic substances --

MR. SELIGMAN: Toxic substances. I -- I stand corrected. That's correct.

MS. SPIELER: I mean that's the -- I think that's one of the problems with the legislation.

MS. KIMPAN: And that's one of the things that David will speak to off line -- the spec 'cause it had to do with the politics of the --

MS. POST: I mean --

MS. KIMPAN: There certainly was a -- a time when asbestos was discussed as one of those potential diseases.

MS. POST: Is it an issue that folks who worked in these plants didn't get compensation for a back injury? I mean in my mind, didn't they get compensation for back injuries? Are we talking about -- it's the toxic exposures that folks didn't get compensated for.

DR. BODEN: Well, there's radiation which is not a toxic exposure, right? And what about -- and then there's the question -- I think hearing loss is actually --

DR. WELCH: Well, noise and radiation are twin categories.

DR. BODEN: They're -- right. They're physical --

MS. SPIELER: Physical toxins.

DR. WELCH: So you know, we're really not dealing with --

MS. SPIELER: We're talking about a subsection of OSHA, right? Physical hazards and toxic substances. It really is sort of what it --

DR. BODEN: But so --

MS. RUDOLPH: Well, I guess at least we could agree that that's the focus of the first discussion here if we want to talk about narrowing --

DR. BODEN: I -- I'll bet we can agree that we're not talking about musculoskeletal disorders. I -- at least not initially, not necessarily to close the door on it for all eternity.

MS. SPIELER: Do you want to put that in the form of a motion?

DR. BODEN: That would be fine.

MS. RUDOLPH: Yes, I would like --

MS. HATFIELD: Before you do that, can I just -- as I sit here and listen to what ya'll were saying and me not seeing it -- I had to kind of stand back and listen. But knowing what -- I sit in a meeting -- the first meeting I ever went to as -- as part of the community and I listened to all the workers talk. There was, like, 500 people in this auditorium and a hundred of 'em, at least, spoke that night. We were there from 6:00 to 1:00 in the morning listening to these people speak about their illnesses.

And granted, some of 'em didn't have anything wrong. There's no doubt in my mind that they did not have anything wrong. But there were other people there who -- who had to stop working because they could no longer function. They -- their hands wouldn't work, their back wouldn't work. They're losing everything, and hence to say what caused that? You don't know. I mean we're not to the point where we know what -- what -- whatever they were breathing, whatever was happening to them, we don't know what it caused. So how do we -- how do we zero in on that?

MS. SPIELER: Let me ask you, Vikki, were -- people were concerned, though, not about what they were lifting but about what they were breathing in and --

MR. BURTON: Correct.

MS. SPIELER: So -- yeah. So -- so -- so it would be a question of the illnesses that were caused by exposures that people -- that were sort of non-exposures of regular life in which they -- they found -- ended -- they just didn't under -- didn't know what the physical --

MS. HATFIELD: They --

MS. SPIELER: -- consequences were?

MS. HATFIELD: They weren't aware of what was --

MR. BLEA: I think that's an --

MS. HATFIELD: -- going through that air conditioning duct.

MR. BLEA: I think that's an accurate --

MS. SPIELER: Okay.

MR. BLEA: -- description of what you're saying there, and -- and -
- and like Vikki's saying, for the most part a lot of them 30 years ago, whether the
government was aware or not, the individual wasn't aware or the contractor wasn't
aware. And that -- that's the issue. And I believe at the meetings that we had, too,
it's not an issue of my back. It's more of an issue of the stuff I -- I breathed in, the
material that I worked in, the noise that I was around. And I think those are the
issues that we have to look at. I -- I tend to -- to think if it was a back injury the --
the workmen's comp locally probably took care of that as a company.

MS. SPIELER: Or they didn't, but it was --

MR. BLEA: Yeah, yeah. Direct that -- in that fashion. But for the
vast majority of 'em, I don't think that's what they're after is the back injuries.
They're after because they can't function because their nervous system is gone or -
- or -- or -- or their life span is -- is shortened. I think those are the issues that we
have to look at, and I think that the vast majority of 'em, that just -- personally
speaking, that's what -- what they're asking you for. Hey, I would have been a
productive worker continuously for another 20 years hadn't it -- I been afflicted
with this disease. Now you're saying I didn't get it at the work place but now
we're saying -- or we should say yes, you did get it at the work place and you
should be compensated for it.

MS. SPIELER: Do you think we can set that as a sort of resolution
today that we -- is there someone who wants to try to articulate it in the form of a
motion that sets priorities for this initial period in the implementation?

DR. BODEN: I'll try. But --

MS. SPIELER: Sure.

DR. BODEN: -- help me with the wording. But I would propose
that initially that this committee focus on illnesses that arose from chronic -- well,
I'm not even sure. I may strike -- exposure to chemical hazards, radiation, or
noise and -- I can't quite figure out how to categorize it.

MS. SPIELER: You can say chemical --

DR. BODEN: 'Cause it's a physical hazard again -- then
musculoskeletal. So that's --

MS. SPIELER: Toxic substances and harmful physical agents?

DR. BODEN: Harmful physical agents. Will that keep us away
from musculoskeletal disorders?

MS. SPIELER: I thought that was the ocean --

MS. RUDOLPH: Oh, an agent, yeah.

DR. BODEN: Harmful physical agents?

MS. SPIELER: No?

DR. BODEN: I don't know. I'm just --

MS. SPIELER: Okay.

DR. MARKOWITZ: Well, we can put in parentheses radiation and noise.

DR. BODEN: Okay. How about that? Parentheses radiation and noise.

Okay. So that -- that -- initially that this committee focus on illnesses arising from, let's say it again, toxic --

MR. WAGNER: Substances and harmful --

DR. BODEN: -- substances and harmful physical agents, parentheses (radiation and noise.)

MS. SPIELER: The -- do you --

DR. BODEN: Period.

MS. SPIELER: -- let's -- let me just ask for clarification. Do you want to put that in terms of what the committee focuses on or also in terms of what the Office of Worker Advocacy at DOE should set as a priority?

DR. BODEN: Gee, just what I was thinking. Yes, I think that that -- the NECA committee would also advise that the Office of Worker Advocacy should focus upon these entities.

(Pause)

MS. SPIELER: Is there a second?

(Pause)

MS. SPIELER: Discussion?

DR. MARKOWITZ: I'll second that motion if you want to -- I -- my only concern is that I don't want it perceived that -- that we're recommending

that the door be closed on other conditions.

DR. BODEN: That's why I said "initially focus."

MR. WAGNER: Focus initially.

DR. BODEN: It's attention on.

(Pause)

MS. SPIELER: Discussion?

(Pause)

MR. SELIGMAN: What do you mean by focusing attention? You mean --

DR. BODEN: Directs its energies towards.

MR. WAGNER: Establishing the procedures and methods that would permit people who have illness arising out of toxic -- exposure to toxic substances and harmful physical agents, getting 'em compensation.

MR. SELIGMAN: I see. So in other words, you're -- you're defining --

MR. WAGNER: Setting priorities.

MR. SELIGMAN: -- defining those claims that the panels would consider?

DR. BODEN: No.

MR. WAGNER: No.

MS. SPIELER: No. We're -- I -- let me see if I can -- I think what we're trying to do is set some priorities for the work of the DOE Office of Worker Advocacy and the work of HHS and DOL. To the extent DOE can influence that the -- the initial priority should be on establishing the procedures that will assist affected workers in getting compensation for these exposures initially because we think that the task is complex that you face and we want to be sure that the initial focus of energies on those things that initially led to the -- the energy being put into getting the legislation.

MR. SELIGMAN: And I think what you -- if I can ask for some clarification, what you mean by "assistance" then is -- is -- is ensuring that we

have either adequate job descriptions or exposure information related to this -- these categories of -- or this category of illnesses or -- and that -- that these be categories for which physicians panels would ultimately be, you know, making an --

MR. WAGNER: Operational.

MR. SELIGMAN: -- its determination.

DR. WELCH: But before that because it would be -- you know, if you have to choose between working with a state there may be barriers that apply to the toxic illnesses and barriers that apply to musculoskeletal. Basically, they focus on the toxic illness there. Kind of guides to the whole thing. That's what --

MR. SELIGMAN: I guess, you know, my only question is -- is -- is to what, you know, degree, David, do you think we have, you know -- you know, freedom to move beyond what we view as the -- is this purely a question of how we define toxic substances and illnesses or --

MR. MICHAELS: I don't -- you know, I don't mean to tell this committee what to do. The legislation, though, is pretty open, and my reading of the way the legislation was finally written is that it just says illness related to the exposure -- to the work -- to the -- to employments and didn't specifically say -- I know the initial proposal we made was toxic chemicals and radiation, but that certainly was not where it ended up. And in the president's executive order, while there's -- there's reference to toxic chemical and radiation, it's inclusive, you know, not exclusive to that.

So if this committee believes we should, you know, include noise, for example, which wasn't originally on our agenda --

DR. BODEN: Right.

MR. MICHAELS: -- that's what we're here to here.

DR. BODEN: I'm working on sort of trying to write something down that will be coherent on the basis of this sentence. It's something that --

MS. SPIELER: Okay.

DR. BODEN: -- ends up being a resolution needs to be a little coherent.

MS. SPIELER: Yeah. Good.

DR. BODEN: Maybe we can --

MS. SPIELER: You want me to --

DR. BODEN: -- go --

MS. SPIELER: -- move on and come back to this?

DR. BODEN: -- come back.

DR. MARKOWITZ: I still have a --

MS. SPIELER: Go ahead.

DR. MARKOWITZ: This is the direction that all this is moving anyway. I'm not sure why -- whether our endorsement has any power to it. And I am concerned that there'll be workers who have other conditions that will come up a year or two, they will apply for these claims, and I don't think that we as the advisory committee want to participate in saying that those are second priority, musculoskeletal conditions or whatever, that those are a second priority. That -- that may be a decision that the office makes initially in terms of emphasizing something, but I'm not sure as an outside body why we need to -- I think this is the direction moving anyway -- why we need to try to endorse this -- this focus.

I can see why we might want to do that for ourselves and say we're going to concentrate on these areas although we're -- you know, we recognize there are other areas of importance and we won't forget them. But I don't see why -- what the gain is of -- of us endorsing that direction of the office. In fact, I'm a little concerned with the downside, which is if we now collude in -- in -- in -- or endorse them ignores other conditions which may be quite important to some of the unions that -- that -- are --

MR. SELIGMAN: That was the gist of my -- my question. It was not an operational one but purely a -- one as to whether we should just as soon leave the field open as to what, you know, we consider ultimately and -- you know, either operationally or by the -- by the physicians panels in terms of what kinds of illnesses should be, you know, eligible for consideration by this advocacy process.

DR. BODEN: Well, let me argue the other side for a moment, which is that there's limited sort of time and limited personnel to devote to these issues, and one of the things that is -- we're doing is trying to set priorities on what to tackle first. And I guess this is reflecting my belief that however badly they're handled that, for example, back problems are more sort of generously handled or -- by workers' comp systems than silicosis and radiation-induced cancer are and that the people who need the help the most are people who have these exposures

to the toxic conditions so that, you know, if we try -- if we or DOE try to do everything all at once they'll end up not doing it as well and not getting the program sort of on -- off the -- off the market and running more quickly.

(Simultaneous comments)

DR. MARKOWITZ: We're not trying to do everything all at once. That's not what we've heard. We've heard that the thrust is the toxic substances.

MR. MICHAELS: But not noise.

DR. MARKOWITZ: What's that?

MR. MICHAELS: But not noise.

DR. BODEN: So -- and I will tell you our experience as, you know, we started tracking the claims that are filed, and we've had a lot of noise claims filed, and essentially -- as you know, essentially all of them denied. Virtually all of them denied. So that's an issue that's of importance.

MR. BURTON: Well, let me just add to -- to your point on the back issue. I think 10 years ago I would have been more comfortable with the notion that backs were being handled all right by the workers' comp program. But Emily and I have written a couple of articles recently where we've looked at changes in state laws that have -- having a major impact on compensability of backs. In states that are now requiring objective evidence it's a requirement that -- that the work place be the predominant cause and not just a contributing cause.

I'm kind of torn on this and -- 'cause I think, frankly, the -- the -- the biggest problem with the state workers' compensation programs right now in handling diseases is backs. That's really a serious -- serious problem.

On the other hand, it's also a very difficult one to get into. It's -- it's going to be -- 'cause the causations are very complicated and the medical profession is split and so on. I've been trying for strategic reasons to kind of go to this toxic substances thing, but I think that would have to be coupled with a very clear statement we're going to be -- we intend to have an agenda that will expand gradually into these other areas. But I think any signal that backs are being handled properly right now is a reason to not look into them would be a disservice.

MR. SELIGMAN: I shouldn't -- we shouldn't lose sight of the fundamental purpose of this aspect of the law, which was to ensure that workers with occupational illnesses who have not succeeded in state compensation systems to date have an advocate within the Department of Energy to assist them in -- in the appropriate not only evaluation but -- but subsequent, you know, filing

of the claim. And my -- my sense is that we should continue to remain true to that principle and that's the only reason I -- I hesitate about at this point in time necessarily narrowing the focus beyond that -- a desire to ensure that the Department of Energy is -- is -- is now -- wants to continue to remain true to that - - that -- that objective.

MR. WAGNER: So you feel as though the Department of Energy is setting itself up in order to be responsive to what they see coming in of failed claims?

MR. SELIGMAN: That's correct.

MR. WAGNER: And that would cover the entire waterfront of people who perceive themselves -- problems arising out of work and that they didn't succeed with the existences?

MR. SELIGMAN: Well, that would be my preference.

MS. SPIELER: See, I -- I think one of the issues, though, is that ultimately these medical panels are going to need to be selected and there's going to need to be guidance to them. And the question is what do you put at the top of your list to tell them? And not whether or not they should be not dealing with these other claims, but how precise is the -- is the guidance we're going to give the medical panels, who's going to be on them, and what are we going to be telling them about having to deal with more -- the more difficult, sort of usually not compensated claims. I think brings us back to an articulation, potentially, of a need for an articulation of priorities, first of all, strategically.

And second, we can say what it is that DOE is working on but there is no -- we can't make any assumptions bridging the political changes as to what this office will be working on in three months and therefore an articulation of what we think -- how this office should prioritize its work over the next three to six months may make some sense in the context of the new personnel coming in.

And so, you know, I think that we should look at it -- at the question with that in mind and not with an assumption of, well, we're doing this and so it will continue to be done and so we don't need to say something overtly about it.

MS. RUDOLPH: I have another question, though. Excluding radiation-induced cancer, beryllium disease, and -- and silicosis, the specific occupational illnesses that I've heard mentioned are asbestos and noise-induced hearing loss. And I'd like to know what else comes to mind in terms of what else you were kind of thinking about: asthma, neuro -- you know, neurotoxic neuropathy --

MR. SELIGMAN: Yes, yes.

MS. RUDOLPH: Yes, yes. Other -- I mean there must be some --

MR. SELIGMAN: Yeah, I've been --

MS. SPIELER: Renal disease.

MR. SELIGMAN: There's renal disease.

MR. WAGNER: Liver disease.

MR. SELIGMAN: Right. There's liver --

MS. SPIELER: Liver disease from --

MR. WAGNER: Right. Exactly.

MR. MICHAELS: Chronic obstructive lung disease.

DR. BODEN: Aren't you on the other side against the -- just sort of -- I mean there are a number of very important things that are generic that have to be done. Setting out the procedures for notifying workers who are having, you know, the people available to -- to do diagnosis and take histories or how they're going to be able to file the claim for the process for which the claim -- you know, sort of -- the list of barriers now turned on its head, if you will.

MS. SPIELER: Yeah.

DR. BODEN: None of those -- at some point some of those things are going to require substance or hazard-specific stuff to go on, but probably most of the first set of steps is actually setting up procedures, agreements, institutions, information gathering entities, and so on. You know, so the argument against this is that maybe the most important things to get done first are these more general kinds of things. I may be, you know, arguing against myself now. We don't have to --

MS. SPIELER: I'm going to -- let's take a couple more comments about this and then decide how we want to proceed with it. It's now 3:30. We're supposed to stop at 4:30. We have -- before we stop we have to set -- make sure that we sort of figure out our action items and who's doing what and set another meeting.

We -- I -- I also would like --

MR. MICHAELS: A comment period.

MS. SPIELER: I'm about to get to that. I'd like to ask if there are people in the audience who are going to want to make comments during the public comment period before the close of this meeting in addition to participation in the meeting as -- as we go along? Anyone? I'll try to make sure that everyone who wants to participate as we go along has the opportunity to do that, but the question I'm really asking is do we need to make -- time on the agenda where we stop in order to allow for public comments or -- so if there's anyone in the audience who would like to be able to do that, I'd really appreciate it if you would let me know.

(Pause)

MS. SPIELER: Okay. So we have an hour to complete our business. I'd like to move into the sort of what are the subcommittees and how are we going to do it fairly soon so that we have our marching orders when we leave here.

Before I do that, I'd like to sort of hear any additional comments about this specific issue and let's see if we can resolve it.

Mr. Chase?

MR. CHASE: Shouldn't -- at risk of being criticized, shouldn't we limit the scope of this to the kind of hazards that are unique to DOE? Noise is not unique to Department of Energy. Radiation -- unique to Energy. Beryllium is fairly unique. And generalized, people could legitimately say, well, I worked at Department of Transportation and I -- I'm subject to aircraft noise and that sort of thing. People in Department of Energy are getting a break and we're not getting a break.

MR. MICHAELS: Actually, this was set up specifically after considering that. The -- the Federal compensation program that was to be run by the Labor Department is addressing things that are unique to the nuclear weapons complex, beryllium and radiation in particular. And Congress and the administration specifically said other conditions which are not unique to DOE facilities but in fact cross all occupations and -- and work places should be dealt with as -- the idea being that in the past all occupational disease claims were fought by DOE and in fact as a good employer we should be assisting people.

Putting aside whether or not we have a clean history or -- or not so clean history, if we believe cases are work-related, we think people should get workers' compensation and we should help them get it. So that's the basis of this. So in fact, you know, this is dealing with the -- the everyday occupational illnesses.

MR. WAGNER: You know, in light of that I really would suggest that we withdraw consideration of the priority-setting since it seems to me that in this first go-round the priorities really ought to be the kind of structuring, the getting moving in order to establish the mechanism for doing the evaluation and identifying the barriers and removing them. I would much rather see us move into a set of subcommittees that would address the larger categories you've identified earlier and have us in subcommittees really analyze the barriers, explicate them, and then begin to propose solutions.

MS. SPIELER: Okay. John?

MR. BURTON: I think I want to disagree with you, Greg. And I think this goes back -- I'd also disagree with you on this point because you've kind of switched sides.

(Laughter)

(Simultaneous comments)

MR. BURTON: -- some party.

(Laughter)

MR. WAGNER: But agree with another --

MR. BURTON: Yeah, that's true.

(Laughter)

MR. BURTON: I think we ought to narrow the focus for the follow reason -- anticipate this -- what the subcommittees are asked to do because I think the first subcommittee, which is under-utilization or why aren't people getting into the system, the information, assistance, that I think there's -- there's a generic one that -- that's -- there's no problem with what the scope is of diseases we're looking at.

Secondly, I think the -- resistance from contractors or from insurance companies, again, I think that doesn't depend very much on the scope of the disease that we're looking at.

The third one, though, the barrier to contested claims I think does vary by disease considerably. And again, I think the -- I want to stay away -- I would like to stay away from the back cases because if you start getting into back cases and thinking about the legal obstacles to getting back cases into the system, you've got a major assignment there. And I think we've got plenty to do if we confine it to the toxics, radiation, and --

MR. WAGNER: Except that there's also a great literature on the barriers, the obstacles, and so I don't think that any -- has to reinvent the wheel. And if this is an issue that's significant to the people who are covered --

MR. BURTON: Well, let me finish here. I think the fourth panel is also -- the one that -- if I understand what the fourth -- it would be to try to help these medical panels or give assignments to the medical panels. Again, I think we ask them to develop causation standards or workable standards for the toxic substances, hearing, and so on and they've got a workable agenda. If we ask them to develop workable criteria for backs I really think we've got a major problem there and I think -- again, I would want to state very clearly as we do this thing we're not saying those problems aren't important and we're not going to get to them, but to initially throw onto these committees the causation standards for everything that's an occupational disease is -- is going to almost clearly bog them down or -- they're going to have to develop their own priorities or something else. And I would prefer to kind of stay with --

MR. WAGNER: Let me back up a minute. I think that part of what's happened --

MS. SPIELER: We have --

MR. WAGNER: -- is that Les was --

MS. SPIELER: Hey! There's a chairperson here. And actually, quite a few people out there would like -- I would like to give a chance to chime in on this issue for a minute. Renee?

MS. RICHARDSON: Yes. I just want to, you know, ask the question -- I think -- who -- who have -- in regards to the medical society or -- in regard to -- enough studies have been done to assist them with determining what's happening -- people who have not been given a -- lesson and have multiple problems. So I guess my question is is there enough -- is -- have you -- done enough research on -- on what causes or what -- what are some of the results of the exposures? You know, what kind of illnesses can you develop due to your exposures? 'Cause there are some things that people have and they have been clearly -- doctors have no clue why they have the disease --

MS. SPIELER: Okay. So that's, I think, something that clearly we're going to need to address. Yeah?

MR. EGAN: If I could just echo her remarks. I'm Chuck Egan. Myself and Kate Kimpan and David -- participation process. We've all been in -- with about 7000 people attending and testimony from well over 650 to 700

people. Most of that testimony is now on our website -- South Carolina very soon.

David, I may be wrong. I don't remember anybody ever talking about a bad back. But I did hear a lot, a tremendous amount about the toxic substances exposures and questions. And it seemed to me that those very serious issues I would hope would be foremost in terms of addressing this panel. This panel could take a look at that participation process. You can take a look at the kinds of problems and get quick and very statistical analysis from our hotline as to what they're hearing the most about. And I hope that that can help to guide you in terms of your priorities.

I know you don't want to exclude anything that you may want to look at, but I think the people have spoken in a way. They've spoken in hearings. I think they've spoken in letters to us and also -- spoken a lot. And -- called our hotline and I do think the -- you know, that that information could be your guide -

MS. SPIELER: Can I make a suggestion to the -- kind of cut-the-baby-in-half suggestion?

DR. BODEN: That's what I was going to do.

MS. SPIELER: Which is that it seems to me --

(Laughter)

DR. BODEN: I was going to join myself together.

MS. SPIELER: Right.

(Laughter)

MS. SPIELER: It seems to me that we're going to have a series of subcommittees and charge them with -- with some work to be done within the next couple of months. And as John has pointed out, a number of these subcommittees really this is not an issue for. And perhaps it is most an issue for when we talk about overcoming state agency barriers and how -- what the priorities should be in developing memoranda of understanding with states and it - - and -- first, and second, it may be an issue in developing guidance for medical panels.

DR. BODEN: Or its composition.

MS. SPIELER: And the composition of medical panels. And so perhaps when we charge -- once we agree on subcommittees, in charging those

subcommittees perhaps we could articulate some priorities as to where to start for those subcommittees and not have a general resolution at this point coming from the committee with regard to the general work of this office. Would that be acceptable?

MR. WAGNER: Yeah, that -- that's -- I was going to suggest that they --

(Laughter)

MR. WAGNER: Yeah. That -- talk about committee priorities, not office priorities. Yes. That would certainly be acceptable.

MS. SPIELER: Okay. Although I think this has been a very useful conversation, and I especially appreciate David's input because clearly this is a situation in which we are looking at -- we may have come in thinking we were looking at DO -- diseases that are special to DOE workers, but actually, the legislation is a far broader charge and I think some of us need to think about that in terms of having committee functions on an ongoing basis if it's a kind of DOE as in kind of interceder on behalf of workers with OD claims in all of these state systems which now -- or jurisdictional systems which now are 47, I gather. And so this is a fairly monumental --

MR. MICHAELS: I -- I don't think we have to process the claims from the Marshall Islands under Marshall Island law.

(Laughter)

MS. SPIELER: Okay.

MR. SELIGMAN: They're under United States law.

MR. MICHAELS: Well, no, that's why I -- that's the --

MS. SPIELER: Right.

MR. MICHAELS: Yeah, that's the --

MS. SPIELER: Okay. Let -- let me suggest that having articulated the barriers before, I've actually got a slightly different proposal with regard to the formation of subcommittees. And I'm also a little worried 'cause I think there are too many. So -- but here's what I have think -- coming off what I said before.

I mean first of all, there's the claim submission issues and work -- worker notification question that what are the barriers to getting the claims from workers into some system. And they -- that would include all of the worker

notification issues but also questions of access to physicians in the local area. Something that David and I had once -- one point talked about the possibility of having some kind of ombudsman or worker advocacy local -- people out in the field who are funded by DOE. What kinds of -- what are the problems here and what are the mechanisms that we can discuss and -- with DOE that might assist in getting information out and assisting workers in filing claims. So that would be one subcommittee.

Second, there's a claims process issue for the Federal government. How does DOE deal with filings? How does DOL? Is there a single triage office? Where is it? How are those decisions -- how do those decisions get made and what are the interrelationships among the agencies in doing that?

Third, there's the whole arena of the medical panels. What are -- who should be on them? How should they function? What are the causation standards? What data should they be given?

I've actually taken off and -- and would suggest that maybe there's a separate issue about the putting together of the exposure data by DOE and how that works, what Andrea was raising earlier today.

MR. MICHAELS: I would think that's a subset of the workings of the panelists, what they need.

MS. SPIELER: Okay. I thought --

MS. RUDOLPH: How did they get the information?

MS. SPIELER: I had -- okay. Okay. So combine those. That was how I originally --

DR. BODEN: Which one?

MS. SPIELER: The medical panels, the causation standards, the exposure data.

MR. MICHAELS: HHS will have their own panel on the exposure data that they need for radiation dose reconstruction. They'll have plenty of their own advice.

MS. SPIELER: There's the relationship with state agencies and overcoming state agency barriers, and I -- I identified those before as being legal barriers in contested claims and also cultural barriers within state agencies to occupational disease claims, and the subset of that is what should memoranda of understanding cover, and insuring that there are written memoranda of understanding that are developed with the various key states as quickly as

possible.

And then lastly, the question of contractor and insurer resistance to claims and what is the best mechanism for addressing that and how -- what -- to what extent do we have some advice to give DOE on making sure that claims don't end up litigated and therefore don't present the kinds of problems that have been identified in terms of legal barriers.

So I think that's a total of five issues.

DR. BODEN: I have one I would like to add, which is data collection and evaluation -- the program, which I think has to --

MS. POST: I'm sorry. I couldn't hear.

DR. BODEN: -- collect data on how many claims are being filed, what happens to the claims, how long it takes to process them, which people get paid, you know, how long that -- you know, all that sort of stuff.

(Pause)

MS. POST: Can we call that also a development of performance measures?

DR. BODEN: Yeah.

MS. POST: Evaluate the --

DR. BODEN: Yeah.

MS. POST: -- process? Yeah, I just called it evaluation, but certainly performance measures would be an essential part. And performance measures for the office but I think also for the contractors. My own thought is that one -- you know, and this'll -- will relate to several areas, but one way of improving contractor performance is making performance in this part of their contract as a -- you know, as a measure that their payment would be tied to how well they did in this program, for example.

MS. RUDOLPH: Just one other quick comment on that. I think it's important to tie in the states on that process, too, because not all but some states could actually essentially provide some surveillance of denied claims so that a state could notify DOE when there's a denied claim and DOE could give some immediate feedback to the contractor about, A, maybe want to drop your dispute of this claim. And also, by the way, you're not supposed to be disputing

these claims to start with.

MS. SPIELER: That -- and that could be part of memoranda --

MS. RUDOLPH: Right.

MS. SPIELER: -- of understanding with state agencies.

MS. RUDOLPH: Yeah.

AUDIENCE MEMBER: Somewhere at some point there probably should be some sort of compendium -- a balanced document that collapses administration, policy, program works, including the performance measures and anything else, the relationship between DOE and the office and the states; the DOE, the office, and the contractors -- suggesting is that not -- another subcommittee, but maybe it's --

MR. BURTON: I think that would be part of the last subcommittee maybe, the one that was being discussed pretty good the other day, the performance standards and kind of giving -- report or something like that or monitoring --

(Simultaneous discussions)

AUDIENCE MEMBER: -- to our stakeholders is what I'm suggesting. Public information -- and it would institutionalize it or it would -- it would legitimize what we --

DR. BODEN: How does this program work overall, not the individual --

MS. POST: Can I just add one thing? You had talked about the medical panels and the causation standards. The way I would think of this is you have to have a legal standard as well as the medical causation standard and combining those in the same tandem would be fine but you can't -- and the -- the legal would be, you know, the exposure showing that the person was at X plant --

MS. SPIELER: Mm-hmm.

MS. POST: -- and whatever. But including that in the panel, I think, would be helpful.

MS. SPIELER: Yeah. I think it should be included with the whole sort of charge to the group that's going to think through the -- what the -- how the medical panel should function. Greg, did you -- Don?

MR. ELISBURG: The -- piece that probably is something that -- part of our claims processing, how you, you know, working on the case -- is where that kind of thing gels. What's the road-map here?

MS. SPIELER: Okay. Paul?

MR. SELIGMAN: Just make a suggestion. I know that the number of panelists is not --

MS. SPIELER: Right.

MR. SELIGMAN: -- but to me the -- all the issues we've articulated, I -- I think that one, three, and four are probably the ones -- the most immediate concern, which is issues related to notification and communication, how to get the, you know, medical panels organized and up and running, what the nature of the relationship would be with the states. I know that you, you know, teased those out and made your comments, but if you're planning on performing sub-panels, I think those would probably be areas, at least for the coming months, that require the most immediate attention.

MR. BLEA: What Debbie has expressed, not that I'm disputing anything that you're saying there as far as being a priority, but I think what Debbie has expressed, I think that should be number one because the people who -- who are going to file the claim or wonder how to go about it, I think this matrix here would tell them. They have an avenue to pursue, and this is the avenue to pursue.

Also, it would give 'em a clue as -- as to how is the church going to work? How is the contractor going to react? How is the state going to react and how are you going to go about claiming the state even if you were rejected a claim. And I think the -- the matrix there should -- should be put in place first and everything else done after that because if -- if the general public who has a claim does not know how -- about that or is skeptical about what we're doing, this would -- should give 'em the confidence and -- that this is really going to work, we want it to work, and this is how to make it work. That would be my comment on that.

MS. SPIELER: Okay. Greg?

MR. WAGNER: It seems to me that that's fundamental agency work that they are working on and that the interagency group ought to be struggling with that. I'm sure that they are and that what we might be able to do most efficiently is say that we would like to be able to comment on it and move it along. You know, critique it, help them, but that is clearly a -- a job that they've got to be working on now, the interagency coordination.

MR. BLEA: But -- I agree with you, but the thing is here is we have to put it in -- and maybe I misunderstood you, but we have to put it in a way

that the general public who has a claim understands how they can go about it.

MR. WAGNER: Right. Well, that's -- I think that we can suggest that that's a critical priority that the agency work on that as a --

MR. BLEA: But -- but -- but Greg, and I don't mean to cut you short, but don't we need a -- a panel or a group -- a subcommittee to say, okay this is the way we want it to be structured or -- and then bring it back to the pool.

MS. SPIELER: Well, I -- I had suggested before, and I -- I -- I actually am -- although I know, Paul, that those are the things that you're -- that the DOE office is worrying about right now, the things that you've prioritized. I also think that the claims processing issues are key to making this program work, and I -- and I think that the question of how that claims policy how they're going to be done generally is something that a subcommittee of this group might want to look at.

And as a component of that, I think we can charge the DOE staff with putting together a set -- a road-map for -- as part of the worker notification work and bringing the drafts of it to us so that we can take a look at it and make sure that it's getting out to people. But I -- I don't necessarily think that it's the committee's job to draft it. I think it's clearly staff job work to draft it and that we should bird-dog it.

MS. RUDOLPH: I just want to make sure that I'm correctly understanding this. My understanding is that the only claims that are actually going to come into DOL are for the three --

MS. SPIELER: We don't know that.

MR. MICHAELS: No. In fact, in initial discussions that I've had with -- with DOL -- some agreement that we should probably have one things processed and then a triage system because people don't necessarily know where they should apply.

DR. MARKOWITZ: Make it user-friendly.

MR. MICHAELS: So once we can get both systems going there should be one application that maybe would go to the Department of Labor that would say these are ours and the rest of DOEs.

MS. RUDOLPH: Oh, but -- but DOE isn't actually paying out claims?

MR. MICHAELS: No.

MS. RUDOLPH: All of that is through whatever the claim process is in different states. That's what I'm --

MS. SPIELER: But -- but people do apply through DOE in order to have the medical panels review their claims so that they can take that information to the state --

MR. MICHAELS: That's one of --

MS. SPIELER: -- or to the contractor.

MR. MICHAELS: But -- but this is the question that -- one of the questions.

(Simultaneous comments)

MS. HATFIELD: But as we can hear from what the hotline's saying, they've had all those calls to the hotline, and that obviously means that people don't know how the dress is, they don't know where to go, and they don't know what to do. And that's what we need to really focus on.

MS. RUDOLPH: But that's --

MS. HATFIELD: I mean we have to.

MS. RUDOLPH: That's the worker notification piece, though, and then what kind of resources are available for follow-up on the worker --

MS. SPIELER: Because --

MS. RUDOLPH: -- notification in the -- in the way of both actual assistance in getting through whatever process is appropriate and in terms of referrals to appropriate panels. I mean if a --

DR. BODEN: Yeah, I was actually going to say that I -- I think if you've gotten 8000 calls you must know something we don't know, right? And if you can help us learn about it?

Comment Period

MS. SPIELER: Yeah. Yeah. I'm going to take one more round of comments and then I'm going to try to sort of sum up and see how we're going to get out of here on time.

MS. STUCKY: One of the purposes of the Federal Advisory

Committee Act is to provide for -- his committee's function, his way of -- of getting public comment, of getting -- a calling sense of confidence is what's going on. I think Ricky has made a really good point that workers who are being covered by this compensation will want to feel like they had a view in shaping and driving the program. And I think that providing for that is essential to the legitimacy.

You may well need a rule-making for setting this out or at least an informal sort of a guidance process to keep them involved in the minutia because that minutia is going to be really critical. Where the forms go fits in. It's going to be critical whether it works for them.

MS. SPIELER: You had your hand up back there?

MS. PONTON: Yes, I -- I've been sitting here all day listening to everything and I see that everyone's struggling very -- very much with these issues. But two things keep coming up in my mind that are -- nagging me, and that is on an overall scale the Department of Energy is going to be setting up this ad hoc committee that you are all involved in -- Department of Energy. Does HHS have a similar ad hoc committee that they're going to be having? Labor going to have the same sort of thing?

That is -- what's going to happen is -- another level -- call it a barrier, trying to call it a challenge, just to put my spin on it. Which means you also have to, like, coordinate with those other agencies and how they're going to -- 'cause before you can get claims and inform the people who are sick how to get the -- file their claims, how you, you know, do -- you're going to have to -- you're going to have to build your candy store. You're going to have to build your infrastructure to deal with these people. Otherwise, they're going to be calling you on the phone, writing you letters, and you're not going to be ready for them 'cause you're not going to know where things are going and what -- who's going to be doing what. And you're going to frustrate the heck out of 'em and they're going to get mad.

MS. SPIELER: Was there -- you said there were two points?

MS. PONTON: Those were the two.

MS. SPIELER: Okay.

MS. PONTON: I kind of --

MS. SPIELER: Okay.

MS. STUCKY: If I could just follow up on -- the office is going to have to be developing MOUs for the states because all -- I just got a good point --

going to have to work on relationships and probably set up for MOUs for DOL and -- and HHS.

MS. SPIELER: Kate?

MS. KIMPAN: I just want to sort of reiterate or -- or agree with what Linda just said, which is unless we sort of, you know, get lost in here there will be a Federal claiming process that goes on that U.S. Department of Labor for beryllium, cancer, and silicosis. There'll be people calling DOE for help. The claiming will go on in the individual state in which those individuals have standing to make a work comp claim.

I don't know that the next person in David's seat and in my seat are going to say let's make a full-blown claims operation right down in the building you were in, but right now what we're mandated to do is help people get into Linda's system and Iris's system and Kathy's system, and there is already a claims operation. There are already agencies that try to help workers make those claims, and DOE reiterated 53 systems how those claims get done in a manual reflecting every state system. It's a great make-work job for somebody like me for the next 17 years, but those exist and so I think --

MS. SPIELER: Okay.

MS. KIMPAN: -- facilitating the information at the states.

MS. SPIELER: I really -- I -- I need to close the comment period and see if we can reach some closure on how we're going to proceed.

MR. ELISBURG: I'm sorry, Emily. What Kate says is exactly the kinds of problems that this committee --

MS. SPIELER: I understand that, and I'm going to sum that up, Don. Please.

MR. ELISBURG: -- because that is not the role of this committee. That's not the role of what the Department of Energy's supposed to be doing. The Department of Energy and the Department of Labor and the government is supposed to be helping people develop plans in order to get into those crazy systems.

MS. SPIELER: Right. I understand that. Let me -- let me suggest that me -- what I'm hearing is people using the word "claim" in somewhat different ways. And I sort of want to skip over the semantics and -- and get to what I think are some of the core issues that I think we need to deal with.

Decision on Next Meeting and Motion to Adjourn

MS. SPIELER: And let me make -- what my suggestion is is that we're -- we name what subcommittees we want, that we name an individual who will take primary responsibility for that subcommittee, and then we allow people to sign up for the subcommittees either today or at a -- over the next week or two, that we pick a couple of possible dates for future meeting. Andrea asked that we do that so that we -- and then we ask our staff to sort of help us finalize the date for our next meeting and come up with a timetable about -- or some agreement about how these subcommittees are going to function.

MS. RUDOLPH: Can we --

MS. SPIELER: Let's -- I'm still back but --

MS. RUDOLPH: Can we do dates first? Because I'm leaving in five minutes.

MS. SPIELER: Okay. Dates first.

MR. BURTON: You've got to give 'em time to turn on --

MS. SPIELER: Hmm?

(Laughter)

MS. SPIELER: Well --

MR. BURTON: You were thinking that the subcommittees would have something to report by the next meeting, right?

MS. SPIELER: Right. And I was -- I was, quite frankly, thinking that we should meet probably in about two months. Does that sound reasonable? I'm -- well, I'm -- that's -- I'm throwing that out as a suggestion.

DR. BODEN: Will that be enough time for the new people to begin?

MR. MICHAELS: Absolute -- yes.

(Laughter)

MS. SPIELER: Okay.

MR. MICHAELS: I -- I can say that.

(Pause)

MS. SPIELER: It's now January 11th. That would make it March. I -- I -- I have to -- with regard to my schedule, I can come on almost any Thursday or Friday and no Monday, Tuesdays, or Wednesdays, so -- which is how -- why you all got asked about Thursdays and Fridays for this meeting.

MR. WAGNER: Because she's the chair.

MS. SPIELER: And I'm the chair, right? So --

MS. RUDOLPH: Thursdays is definitely better for people --

MS. SPIELER: Right. And Thursdays is definitely better for people who come from the west coast.

MR. BURTON: March 15 --

MS. RUDOLPH: So the 15th?

DR. BODEN: The Ides of March?

MS. SPIELER: The 15th, the 22nd, or 29th of March would be --

MS. RUDOLPH: Those are all fine with me.

MS. SPIELER: 22nd is bad.

(Pause)

DR. MUELLER: I can't do the end of March 'cause I'm going to be out of --

DR. MARKOWITZ: The 29th is bad.

MR. MICHAELS: March 15th.

MS. SPIELER: I promised Andrea more than one date, so --

MR. MICHAELS: How about March 8th?

MS. HATFIELD: Well, we had three but we changed it.

(Laughter)

MS. SPIELER: March 8th or March 15th?

MR. WAGNER: I can do it the 8th. The 15th I can't do it.

PARTICIPANT: March 8th?

MS. POST: I think it's enough time.

MS. SPIELER: That would be -- that's like --

MR. MICHAELS: I think -- I mean this is a front-loading process.
It's okay.

MS. SPIELER: But I mean given the timetable on the HHS work on medical panels, I think we're going to need to at least discuss those issues.

MR. MICHAELS: And we want to start writing regulations.

MS. POST: The 16th?

MS. SPIELER: March 8th, I think, is the one we just backed into.

(Simultaneous discussions)

MS. SPIELER: March 8th is a Thursday. If we can't do it March 8th, we'll look at the 15th with the understanding that there may be some people on either date that can't make it.

DR. MUELLER: I can do the 18th but not the 15th.

MS. SPIELER: You can do the 8th?

DR. MUELLER: I can do the 8th.

MS. SPIELER: You can do the 8th, okay. Why don't we try for the 8th of March and we'll use the 15th as a backup if it turns -- and we'll ask staff to do a quick -- fairly soon do a -- a full round of queries about those dates, okay?

All right. Now, it seems to me that -- here are the issues that I think we have, and Linda, you want to take responsibility?

MS. RUDOLPH: I will be on any committee and I will not be responsible for anything.

(Laughter)

MR. MICHAELS: And she's leaving.

MS. SPIELER: Yeah.

MS. RUDOLPH: -- my judgement --

(Simultaneous discussions)

MS. SPIELER: Okay.

DR. WELCH: I think the list you made was fine. And once we get started we'll find that we -- the panels are wrong or we need another one or whatever, but we need some structure to start with. I personally would skip number two, but it's okay with me.

MS. SPIELER: I don't even remember which is --

DR. WELCH: Number two was doing with -- was dealing with Federal cases. And I sort of think --

MS. SPIELER: No, no. It wasn't dealing with Federal cases. It was dealing with claims process and any interrelationship with other Federal agencies that that entails.

DR. WELCH: Oh, I thought -- I thought it was claims that came to --

MS. SPIELER: No.

DR. WELCH: -- OWCP.

MS. SPIELER: No.

DR. WELCH: Okay.

MS. SPIELER: It's claims process in general.

DR. WELCH: Okay.

MS. SPIELER: And it's not about what constitutes a legal claim, but it's about how the agency deals with queries, where information goes. It's not about worker notification either. It's about once the worker notifies DOE I need help, what do we do.

DR. WELCH: Yeah. Right. And that's -- okay.

MS. SPIELER: Okay.

DR. WELCH: So then -- then --

MS. SPIELER: So --

DR. WELCH: Yeah. So then I --

MS. SPIELER: Okay.

DR. WELCH: -- I think all of them are --

MS. SPIELER: Okay. What I would like to do -- so -- in order to help the staff is to see if we can identify one person who will take sort of lead responsibility for each of these areas, and then we'll constitute the subcommittees over the next week or two. Is that reasonable?

DR. WELCH: Mm-hmm.

MS. SPIELER: Okay. We have the issue -- I don't know which order people wrote them down in and I don't remember which order I originally read them in, so forgive me.

MR. BURTON: I probably can give you the order.

MS. SPIELER: Okay. Throw 'em out, John.

MR. BURTON: Well, the first one was is barriers to getting into the system, worker notification, like the physicians who have knowledge, and so on.

MS. SPIELER: Okay.

MR. BURTON: That committee would also be presumably assigned the oversight of the publications that would -- that would deal with the program to get --

MS. SPIELER: Okay. So claim submission issues broad -- getting into the system. Who would like to be the sort of point person on that? And you will have staff assistance, it's my understanding, from DOE. It isn't like you have to have an office with a secretary in order to do this.

MR. BURTON: Jim Ellenberger.

MS. SPIELER: Hmm?

DR. BODEN: Jim's not here right now.

(Laughter)

DR. WELCH: Vikki, do you want to do that?

MS. HATFIELD: Sure. I'll do it. I'll do it.

MS. SPIELER: Great. That would be wonderful. And I -- I think that should also include an articulation of where you see all the barriers so that we can over time try to make sure they're being addressed.

Okay. What's number two on your list, John?

MR. BURTON: Number two is the claim processing for the Federal government, this -- what you just -- you just explained.

DR. WELCH: Ricky's raising his hand. He must be --

MR. BLEA: No, no. I was -- I --

(Simultaneous comments)

MS. HATFIELD: He's going with me.

MS. SPIELER: We want to make sure that the -- the -- the union folks and community folks don't only work on that one issue, so --

(Laughter)

MS. HATFIELD: We'll swap around.

MS. SPIELER: Okay. For the time being why don't I take responsibility for the claims process issues and -- and we'll see as we go forward.

Number three?

MR. BURTON: Medical panels. Composition, data they need, causation centers, both clinical and legal.

DR. WELCH: I will work very hard.

(Pause)

DR. WELCH: I'm chairing an -- committee --

MS. SPIELER: And Linda just refused it.

DR. WELCH: But I will work very hard.

DR. MARKOWITZ: And -- and I'll --

DR. WELCH: I will do my assignments. I just don't want to have to keep --

DR. MARKOWITZ: -- work hard on it also.

DR. WELCH: -- everybody else on track.

(Laughter)

MS. SPIELER: Steve is going to take lead responsibility for that.

Fourth?

MR. BURTON: State agencies, barriers both legal and cultural, and the subset of that is memoranda of understanding's content.

MS. SPIELER: Okay. Iris has agreed to take lead responsibility for that.

MR. BURTON: Next one was contractors and insurers' resistance. I'm willing to do that one although it's -- it's -- I think one of the -- my reactions is that this committee doesn't have a representation from any of those folks.

MS. SPIELER: Yeah.

MR. BURTON: This is going to be a real reach.

MS. SPIELER: But we do have some people in the audience who know something about that and who've offered to help.

MR. BURTON: Okay.

MS. SPIELER: And so --

MR. BURTON: Well, if you could meet me after the meeting and we'll -- I'll try to get your assistance.

Then finally was overall data, performance measures for both the DOE and contractors and evaluation. I think that was one that --

MS. SPIELER: That Les brought up.

MR. BURTON: Les?

(Pause)

DR. BODEN: Okay.

(Pause)

MS. SPIELER: Okay. So obviously, all of these are open to other people and each person who's taken primary responsibility should feel free to harass particular people that you would like to have working with you into doing that.

DR. WELCH: And you can sign up for more than one.

MS. SPIELER: Hmm?

DR. WELCH: And you can sign up for more than one.

MS. SPIELER: And you have to sign up for more than one.

(Laughter)

MR. BURTON: Do we have e-mail addresses and so on?

MS. SPIELER: I think we're in the book, but -- okay. Judy, somebody, we need e-mail addresses for all of the committee members and staff members if they weren't in the materials that were given to us as quickly as possible so we can be in touch with each other.

MS. KEATING: Inside of your binders.

MR. BURTON: Yeah.

MS. KEATING: There's a list. We have most of them and I will supplement.

MS. SPIELER: Okay.

MS. KEATING: I'll get it.

MS. SPIELER: Good.

DR. WELCH: It would be great if you could actually --

MR. MICHAELS: If there is missing or incorrect information

please get that to us now and we'll give you that --

MS. SPIELER: Okay.

DR. BODEN: I think to -- people in DOE could inform the people who are the committee chairs about who they can get who's a staff person in DOE who will be helping them to carry out their subcommittee work -- specific --

(Pause)

MS. SPIELER: Does the staff any -- have any -- especially you guys who think you're going to be here --

MR. MICHAELS: Exactly.

MS. SPIELER: -- 10 days from --

(Laughter)

MS. SPIELER: Any specific concerns that are lingering out there that you would like to raise with us in terms of what would be helpful to you?

(Pause)

MS. SPIELER: No, I think actually -- patience may come from others but urgency will undoubtedly come from this committee.

MS. KIMPAN: -- reiteration of David's, you know, comment that they're currently looking -- tail end of the process to fill a position -- not yet -- so he's not clear where --

MS. SPIELER: Right. No, we understand that. Obviously, as those things develop it would be helpful if you could make sure that the information gets to us.

And let me just say also that I know that given the concerns out there about the transitional period, I personally would be happy to have my contact information out on the website if people want to get in touch with me directly with regard to concerns that should be brought to the advisory committee. That would be fine with me. And I think it might assist a little, at least in this transitional period, to make people feel that there's continuity.

MS. KIMPAN: Something else that I -- as a -- as a potential resource and you heard the folks on the hotline mention. There's an immense wealth of information that has been garnered from these calls. There's a survey which is in your book that's asked of callers to this line, and there is an ability --

given a little bit of lead time to provide you with the information, sort of synopsise who's calling about what categories, not by the name of course but by facility, by what they think their conditions are, et cetera, et cetera, et cetera. So perhaps, you know, some synopsis of what it is that we've been -- the gathering of this database might help folks with some of the -- the discussion you were having earlier and will have in the future and perhaps we can --

MS. SPIELER: Yes.

MS. KIMPAN: -- out to you what the parameters are, what the data -- we have are, and then ask for some help -- format that would be most helpful and whether it's by facility, by state, by disease, by gender, by age, you know, whatever, we've got a wealth of information that might take a little bit less time than reading the hundreds of pages of transcripts.

MS. SPIELER: Okay. That -- that would be very helpful. And I assume that staff will respond to subcommittee requests for information directly as opposed to having it routed through me, which is why we -- one of the reasons we designated people to have responsibility for those subcommittees today. So if the subcommittees over the next two months either need to meet, which I assume can be arranged, or need to get information from the Department in order to develop their discussion points and recommendations for our next committee meeting, I would ask that staff be as helpful as possible in getting that information together. And if there's any concerns and you need to involve me, then obviously I would make myself available. But I would prefer if it not all be routed across my desk.

MS. KIMPAN: I'd like to reiterate her preference.

MR. BLEA: I have a question, Emily. There's -- there's nothing to say that we only have to meet one day. If -- if we're going to --

MS. SPIELER: Yeah.

MR. BLEA: -- come all the way to Washington, D.C., put yourself in the time limit, then I say that we should either stay late that night or come back the next day because this is important stuff that we're addressing here. And quite frankly, I wish that we could have had two days for this meeting.

MS. SPIELER: Yeah.

MR. BLEA: 'Cause I don't think it addresses the needs in the time element that we're up against, that we need to -- to move forward with this, and I don't think that one day -- I would rather come and commit to two days or three days and go home after one day if we got everything done. But I hate -- I hate to come -- I hate to come for -- for one day when we have two more days of business

to do and we're not going to do it. So I think if everybody would keep that in mind.

I -- I -- I, for one, have no problem coming for two days if that's what it needs. But I certainly have a problem coming all this way for one day and we're still not where we need to be. In a sense that's where we are today. We're -- we're -- we lost people and I understand people have schedules and stuff, don't get me wrong. But if we're going to come this far, even if we were to go west, people have to travel.

(Laughter)

MR. BLEA: People have to travel. Let's conduct business whether -- either we go late into the night or we go into the next day. And I think the public would agree with that too, if they're -- especially if they're coming from a long way to attend the meetings.

DR. BODEN: Related to that, not that I want to travel farther, but over a longer period of time we might think, actually, about meeting in -- in places where there are DOE facilities, you know, meeting in, you know, Savannah River

or Las Vegas or Los -- or wherever as -- as a way of actually giving -- you know, we talked about access --

MS. SPIELER: Yeah.

DR. BODEN: -- to the people who actually are going to be the most affected by what it is that we do.

MS. SPIELER: Well, I certainly am open to both of those suggestions. It seems to me we need to set our next meeting today and we should just set it and move ahead.

Now, if -- is it okay to set that one in D.C. or do --

DR. BODEN: Well, we don't have to set the location today, actually.

MS. POST: I personally think with the transition to a new administration it'd be easier, I'm sure, for the new administration to have it here.

MS. SPIELER: That's true, and we might want to meet a lot of the staff and they might not bring all of --

DR. BODEN: Right. I think that's a good point.

MS. SPIELER: -- them to a meeting. So why don't we meet here next time?

DR. BODEN: Could we -- could we --

MS. SPIELER: I have no problem with scheduling it as a two-day meeting at this point because I think if we actually make some progress in all of these six areas it's going to be a fairly significant meeting and we may not -- we may have trouble getting it done in a day or at least in an abbreviated day where people run out to catch planes.

DR. BODEN: The -- the workers' comp research group is scheduled for the 9th, just so you know that, of March. Now, it may be scheduled for the -- I don't know whether it starts in the afternoon.

MR. BURTON: I think it's going to start in the afternoon.

MS. SPIELER: In the -- on the 9th? Well, why don't we at minimum say that we won't have a 4 or 4:30 cutoff.

DR. BODEN: Right. And we might need the next morning --

MS. SPIELER: Yeah. And we might need the next morning --

DR. BODEN: Come late to that other --

MS. SPIELER: -- if necessary. And I don't -- actually, I don't think that many people here, actually, are obligated to the --

MR. BURTON: Well, the other option --

MS. SPIELER: -- meeting.

MR. BURTON: -- to block both those days -- Emily? To block both -- ask people to block both those days right now.

MS. SPIELER: Yeah.

MR. BURTON: -- see where we are two or three weeks in advance and -- and figure out what the agenda is.

MS. SPIELER: Okay.

MR. BURTON: If -- you know, if there's a lot of stuff, fine, just do a day and a half.

MS. SPIELER: Yeah.

MR. BURTON: If not, just tell people --

MS. SPIELER: Yeah.

MR. BURTON: That would still give enough time to make --

MS. SPIELER: Do you all who are going to be handling the logistics of this, did you hear that? We're going to block the second day and make a decision later based on what we think is -- is going to be necessary?:

MR. SHOR: Is there a date yet?

MS. SPIELER: We're looking at March 8th with a possibility of a different Thursday in March if too many people can't make that.

MS. KIMPAN: And perhaps going into the evening or onto the morning of the 9th, Glenn.

MR. SHOR: Okay.

MS. SPIELER: Before we do that, okay, is there anything else on this logistics department before we close out that conversation?

Okay. David?

MR. MICHAELS: I want to take a moment and introduce Steve Cary, who's the principal deputy assistant secretary for Environment, Safety, and Health. And he will, starting sometime after next Friday, be the acting assistant secretary. And for whatever period of time he will be acting, someone who's been very supportive of this and someone who I have great confidence in and friendship for, and I want -- just wanted you to meet him because he'll be someone whom you no doubt will be in directing with in the future. Steve Cary.

MR. CARY: Thanks, David. I look forward to working -- working with all of you and meeting with you, speaking with you, becoming much more friendly and engaged in this.

I have a background in Public Health but also an environmental engineer, so I'm sort of bridging a -- bridging a gap here. I don't know what we're going to do when David goes, but I'll -- I'll stay in touch with him.

(Laughter)

MR. CARY: I'll have his cell phone number. So -- so I'm sure

we'll be able to keep this momentum. And I especially want to work with you on -- on making a good presentation to the transition folks so this -- this thing continues to move rapidly along.

DR. BODEN: Maybe you want to invite Emily to -- to come to --

MR. CARY: Sure. That's great.

MS. SPIELER: That'd be --

(Pause)

MR. MICHAELS: Can I say something else just as a personal thing? This has been a really very remarkable meeting for me, and I think I'm speaking for everybody who works for Department of Energy in the background, because obviously a lot of the issues that you're thinking about we've been, you know, thinking about and mulling and pondering over and tearing our hair out for quite some time. And to sit in a room with, you know, people of this caliber around the table who are, you know, have spent their lives working on these issues and dedicated to, you know, getting workers both, you know -- you know, justice and benefits, it's really -- it's a -- it's very, very rewarding to us and it's a very hopeful sign to be able to have this much sort of intellectual firepower dedicated to these issues. It's something that we're very grateful for. And so I -- and the fact that you come on your own volition and you're willing to help us do this is really something that I just want to thank you all for.

(Applause)

MS. SPIELER: And I think it has to be said that we're here because -- I mean we -- a number of us have had conversations with you, you know, periodically in various ways over the last couple of years, and we said it couldn't be done and we think that it was largely because of what you did that it has been done up to this point. And --

MR. MICHAELS: And now it's up to you.

MS. SPIELER: -- it's pretty amazing.

(Laughter)

MS. SPIELER: Yeah, but you did something that wouldn't have happened had you not been here, and there aren't too many people who hold high office in Federal government who can say that.

If there's nothing else I would entertain a motion to adjourn.

MR. MICHAELS: So moved.

DR. BODEN: This'll -- this one'll get passed.

(Laughter)

MS. SPIELER: Thank you all.

(Whereupon, at 4:21 p.m., the meeting was concluded.)